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STATE OF SOUTH CAROLINA
In the Court of Appeals

On Appeal from Charleston County
Court of Common Pleas

The Honorable Roger M Young, Circuit Judge
The Honorable Daniel F Pieper, Circuit Judge

Case No 06-CP-10-1578

ORIGINAL

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NOV 18 2010

SC Court of Appeals

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 06 CP 10-1578
LAWTON LIMEHOUSE, JR.	)	
	)	
Plaintiff	)	
	)	
v	)	Order Reviewing Award of
	)	Punitive Damages
PAUL H. HULSEY and THE HULSEY	)	
LITIGATION GROUP, LLC	)	
	)	
Defendants	)	
	)	

FILED
2010 JAN -7 AM 11:31
JULIE L ARMSTRONG
CLERK OF COURT
BY _____

In Gamble v. Stevenson, 406 S.E.2d 350, 305 S.C. 104 (S.C. 1991) the South Carolina Supreme Court stated that in order to ensure that a punitive damage award is proper the trial court shall conduct a post trial review and may consider the following (1) defendant's degree of culpability (2) duration of the conduct (3) defendant's awareness or concealment (4) the existence of similar past conduct (5) likelihood the award will deter the defendant or others from like conduct (6) whether the award is reasonably related to the harm likely to result from such conduct (7) defendant's ability to pay and finally (8) as noted in Haslip, "other factors" deemed appropriate.

Upon completing its review, dedicated to the postulate that no award be grossly disproportionate to the severity of the offense, the trial court shall set forth its findings on the record.

1. Defendant's degree of culpability

I find there was clear and convincing evidence presented at the damages hearing which would support a jury's finding that the Defendants intentionally defamed the Plaintiff by holding a press conference and making allegations that insinuated the Plaintiff was involved in illegal activity.

2. Duration of the conduct

R

I find there was clear and convincing evidence presented at the damages hearing that the allegations made were not spontaneous in that the press conference and the allegations were planned as part of the filing of a lawsuit against the Plaintiff and that such planning necessarily took place over a period of weeks if not months

3 Defendant s awareness or concealment

By their nature and method of publication I find the Defendants were fully aware of the conduct which the jury found worthy of punishment

4 The existence of similar past conduct

No evidence was presented of similar prior conduct by the Defendants

5 Likelihood the award will deter the defendant or others from like conduct

I find that the award of punitive damages will very likely deter not only the Defendants but others from similar conduct in the future

6 Whether the award is reasonably related to the harm likely to result from such conduct

The award of \$2 600 000 in punitive damages is just over two and one half times the amount of \$1 000 000 in actual damages I find this award to be reasonable in light of the amount of actual damages the jury awarded

7 Defendant s ability to pay

The evidence produced at the hearing shows the Defendants would be among the rare few who could actually pay an award of this amount without causing financial bankruptcy

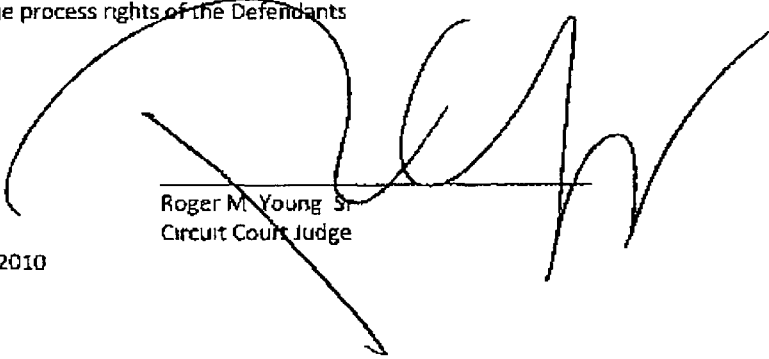
8 ' Other factors deemed appropriate

I have considered the fact that the Defendants were not able to present mitigating evidence due to the constraints imposed by the rules of trial procedure involving default damages hearings. However, as the presiding trial judge I was privy to most if not all of the evidence the Defendants wished to present. I find jury's verdict was still reasonable in light of that evidence.

Therefore, I find the jury's award of \$2,600,000 in punitive damages was not excessive, nor did the award violate the due process rights of the Defendants.

It is so ordered.

11/7 2010
Charleston, SC



Roger M. Young Sr.
Circuit Court Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr)
)
Plaintiff)
)
Paul H. Hulsey and The Hulsey)
Litigation Group, LLC,)
)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No 2006 CP-10 1578

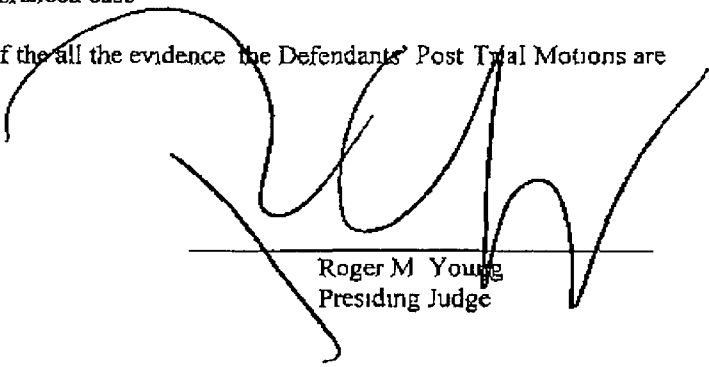
ORDER DENYING
DEFENDANT'S POST TRIAL MOTIONS

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2006 JAN -7 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before this Court upon Defendants' Post Trial Motion to Dismiss for Lack of Subject Matter Jurisdiction or Motion for Relief from Void Judgment, Post Trial Motion for Relief from Judgment based on Mistake and/or Excusable Negligent, Post-Trial Motion for Judgment Notwithstanding the Verdict or for New Trial Absolute and Motion For New Trial on Punitive Damages in the above referenced case

After much consideration of the all the evidence the Defendants' Post Trial Motions are respectfully DENIED

AND IT IS SO ORDERED



Roger M. Young
Presiding Judge

January 7, 2010

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT ON COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO 2006-CP-10-1578

Lawton Limehouse Jr
Plaintiff

versus

Paul Hulse
Defendant

Clicked in place Cancelled

FILED
2009 NOV 16 11 4 15
JULIE J ARMSTRONG
CLERK OF COURT

CHECK ONE

☒ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

☐ **DECISION BY COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (CHECK ONE): ☐ Rule 12(b), SCRCP, ☐ Rule 41(a), SCRCP (Voluntary nonsuit),
☐ Rule 43(k), SCRCP (Settled) ☐ Other - _____

☐ **ACTION STRICKEN** (CHECK ONE): ☐ Rule 40(j), SCRCP, Bankruptcy, ☐ Other - _____

IT IS ORDERED AND ADJUDGED ☐ See attached order ☐ Statement of Judgment by Court;

Jury verdict. The Jury finds for the Plaintiff against the Defendants in the amount of One Million Dollars actual damages and Two Million Six Hundred Thousand in punitive damages.

Dated at Charleston, South Carolina, Date _____

Judge Signature

Judge Code

This judgment was entered on the _____ Day of _____, 200____, and a copy mailed first class this _____ Day of _____, 200____, to attorneys of record or to parties (when appearing pro-se) as follows:

Frank Cisa
Attorney(s) for Plaintiff(s)

Cam Lewis & Robert Hood Sr
Attorney(s) for Defendant(s)

Clerk of Court

FILED
2009 NOV 17 PM 3 21
JULIE J ARMSTRONG
CLERK OF COURT

SCRCP Form 4 (Rev 2/96)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Lawton Limehouse Jr,)
Plaintiff)
vs)
Paul H. Hulsey and the Hulsey Litigation,)
Group, LLC)
Defendants)

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2006 CP-10-1578

VERDICT FORM

VERDICT

We the Jury find for the Plaintiff against the Defendants in the amount of
1 Million dollars actual damages

John B. Wright
FOREPERSON
13 Nov 09
DATE

Do you find the plaintiff has met the burden of proof by clear and convincing
evidence and that he is entitled to punitive damages?

Yes ✓

No _____

If Yes what is the amount? 2.6 Million dollars

John B. Wright
FOREPERSON
13 Nov 09
DATE

DL-CP-10 1577

06-CP-10-1578

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lawton Limehouse, Jr ,

Plaintiff,

vs

Paul H. Hulsey and The Hulsey
Litigation Group, LLC,
Defendants

Civil Action No 2 06-1379-CWH

ORDER

FILED
2009 MAR -5 PM 5:26
JULIE F. COOPER
CLERK OF COURT

Lawton Limehouse, Sr

Plaintiff,

vs

Paul H. Hulsey and The Hulsey
Litigation Group, LLC,
Defendants

Civil Action No 2 06 1380-CWH

On April 19 2006 the plaintiffs commenced these actions in state court raising state law claims of libel and slander (collectively referred to as the "defamation claims"). The defendants removed the cases alleging that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. On June 2 2006 the plaintiffs moved to remand the cases to state court.

After analyzing the complaints and briefs and hearing arguments from the parties the Court holds that federal question jurisdiction is not present in these cases. Accordingly both actions are remanded to state court.

AND IT IS SO ORDERED

C. Weston Houck

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

July 19 2006
Charleston South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No 2006-CP-10-1578
	)	
Lawton Linchouse Jr ,	)	
	)	ORDER DENYING
Plaintiff,	)	DEFENDANT'S MOTION TO DISMISS
	)	FOR LACK OF SUBJECT MATTER
v	)	JURISDICTION
	)	
Paul H Hulsey and The Hulsey	)	
Litigation Group LLC	)	
	)	
Defendants	)	

FILED
2008 MAY 22 PM 12:07
CLERK OF COURT

This matter came before this Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Defendants have moved pursuant to Rule 12(h)(3) of the South Carolina Rules of Civil Procedure to dismiss this action for lack of subject matter jurisdiction, or in the alternative for relief from a void judgment pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure.

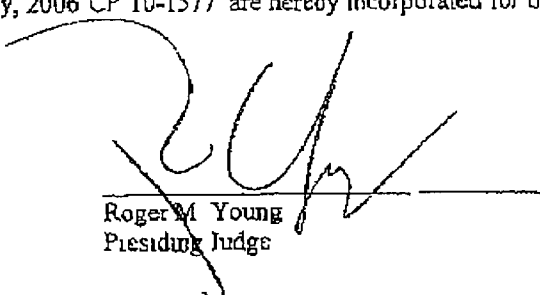
Lack of subject matter jurisdiction can be raised at any stage in the proceedings. If it is not raised at the pleading stage, it can be raised at trial, in a post-trial motion, or even on appeal.

Here, the Defendants contend that this Court does not have jurisdiction to proceed with entry of default or the default hearing because the federal district court has not taken the statutorily-mandated procedural steps necessary to revest jurisdiction in this court on remand pursuant to 28 U.S.C. § 1447(c). Section 1447(c) states that the state court may proceed after the federal court clerk mails a certified copy of the order of remand to the clerk of the state court. The Fourth Circuit has taken the minority view on this issue which holds that mere entry of the order of remand by the federal district court deprives the federal court of the jurisdiction over

any motion/petition to reconsider/rehear the remand After consideration of the evidence, this motion is DENIED

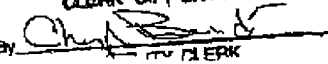
All of the arguments and briefs made by the Defendant at the Post Trial arguments in the companion case of Lunehouse Sr v Hulsey, 2006 CP 10-1577 are hereby incorporated for the record in this case

AND IT IS SO ORDERED


Roger M. Young
Presiding Judge

May 22 2008

Charleston South Carolina

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK CP, GS & FC
By  CLERK

cc
Attorneys

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LAWTON LIMÉHOUSE Jr)

Plaintiff)

vs)

PAUL H. HULSEY and THE
HULSEY LITIGATION GROUP
LLC)

Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2008-CP 10-1578

2006-CP 10-1577

ORDER

2007 FEB -7 PM 3:18
HULT J & ASSOCIATES
CLERK OF COURT

FILED

The motion came before the court on December 15, 2006, on the defendants' motion to set aside entry of default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

PROCEDURAL HISTORY

The complaint in this case was originally filed in this court on April 19, 2006, and served on the defendants on April 21, 2006. The defendants then filed a removal to the United States District Court in Charleston on May 5, 2006. Upon a motion to remand to the state court filed by the plaintiff, the District Court remanded the case on July 19, 2006, and the order was electronically transmitted to counsel on July 20, 2006, as indicated by counsel pursuant to a conference call. The clerk of this court then filed the federal court order remanding the case on July 21, 2006. The plaintiff then moved for entry of default on August 21, 2006, which was filed by the clerk on August 22, 2006.¹

¹ The defendants failed to file an answer in this case until August 29, 2006.



STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-903 (1989); *Wham v. Shearson Lehman Bros. Inc.*, 298 S.C. 462, 465, 381 S.E.2d 489, 502 (Ct. App. 1989). An abuse of discretion occurs when the decision was controlled by an error of law or when the order is without evidentiary support. *Stark Truss Co. Inc. v. Superior Const. Corp.*, 160 S.C. 503, 602 S.E.2d 99 (2004). "Under S.C.R.Civ.P. 55(c), the standard for granting relief from an entry of default is 'good cause.' The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court. *Top Value Homes, Inc. v. Harden*, 319 S.C. 302, 306, 480 S.E.2d 427, 429 (Ct. App. 1995) (holding that the trial court erred in applying the more stringent standard of 'excusable neglect' for setting aside a default judgment under Rule 60(b) SCRPC, instead of the 'good cause' standard under Rule 55(c) SCRPC, where the claimants did not have a default judgment, but at most had an entry of default). In deciding whether 'good cause' exists to set aside default, the trial court should consider the following factors:

1. the timing of the defendant's motion for relief,
2. whether the defendant has a meritorious defense, and
3. the degree of prejudice to the plaintiff if relief is granted.

Stark Truss Co. Inc. at 102, 510.

128

ANALYSIS

There are three main issues which have been presented to the court for resolution. First, this court must determine at what point the 30 day time period for the defendants to file an answer began to run and what effect the removal of the case and its subsequent remand had on that time period. Second, the court must determine whether the filing for removal by the defendants constituted an appearance and if so should the defendants have been entitled to notice prior to the entry of default. Lastly, did the defendants demonstrate "good cause" for failing to file a timely answer so that this court should set aside the entry of default or allow the filing of an untimely answer.

The first issue seems to be one of first impression in South Carolina as applied to this factual scenario. Any unexpired portion of the 30 day time period to answer should be tolled during the time that the case was removed to the District Court; therefore the defendants' answer was due by August 5, 2006. This date is reached by taking the 14 days before the case's removal from the 30 day total to allow for 16 additional days from notice of remand. Deciding whether the defendants were entitled to an additional five day time period pursuant to SCRPC 6(e) is irrelevant because the defendants' answer was filed 24 days outside of the tolled time frame. Therefore, since the defendant failed to file an answer in state court before the case's removal, failed to file one in federal court before the case's remand, and again failed to file one in state court before the lapse of the 30 day time period, the entry of default by the Charleston County Clerk of Court was proper.

/Df

The tolling of the time period during removal is the appropriate method of computation. Once a case is removed from the state court to federal court, the state court loses all jurisdiction over the matter. *Davis v Davis*, 267 S.C. 508, 229 S.E.2d 847 (1976) (citing *Barrett v Southern Ry. Co.*, 88 F.R.D. 413 (D.C.S.C. 1975)). When the federal court remands a case, it is the duty of the state court to proceed as though no removal had been attempted. *State v. Columbia Ry., Gas & Electric Co.*, 100 S.E. 355 (1919). Such jurisprudence leads this court to the conclusion that the appropriate procedure for dealing with time limitations on responsive pleadings after remand is a tolling of those limitations during the time which the state court loses jurisdiction. The Supreme Court of Georgia follows this same rationale in *Cotton v. Federal Land Bank of Columbia*, 246 Ga. 188, 269 S.E.2d 422 (1980) where the court stated in dicta that "[e]ven if no answer had been filed, one could be filed upon remand to the state court if sufficient time remained." *Id.* at 191, 425 (see also *Dauenhauer v. Super. Ct.*, 149 Cal.2d 22, 307 P.2d 724 (1957) (if answer not yet filed, party entitled to unexpired time that existed at time of removal)).

As for the second issue pertaining to the defendants' argument that they should have been given notice before the entry of default was entered, this argument ultimately does not afford any basis for relief. On the one hand, it has been argued that a petition for removal to a federal court is an assertion of a federal right, and it may not be held to affect a petitioner's posture in a state court and does not result in the petitioner appearing generally in state court. John J. Dvorske, J.D., M.A., III, *What Constitutes Appearance*, 6 C.J.S. Appearances.



§32 (2008) Whether a general appearance has been made involves a matter of intent, but the conduct of a defendant may constitute an appearance as a matter of law *Thompson v Queen City Coach Co* 169 S C 231 168 S E 693 (1933), *Petty v Weyerhaeuser Co*, 272 S C 282, 251 S E 2d 735 (1979) If an appearance has been made as a matter of law then proof of such intent is not required *Petty v Weyerhaeuser supra* It is difficult to conclude that the defendants had any intent to appear other than compliance with the filing requirements of the removal petition On the other hand, while every filing does not constitute an appearance, courts have struggled to define just what constitutes an appearance and have even considered communications with the court of a desire to defend as being an appearance as well as submission of letters from counsel

Notwithstanding the court concludes that even assuming that an appearance has been made, that entry of default by the court is nonetheless proper "Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party *Stark Truss Co, Inc* at 102 509 Rule 5 of SCRCP states that:

[n]o service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default

SCRCP 5(a) Even if the rule were to require service on a defendant who has appeared by filing notice of removal but is in default, the failure to do so still would not afford a basis for the movant to ultimately avoid default due to attorney



error. This conclusion results since a simple entry of default makes no substantive change to the proceedings which the parties should not already be aware because it is simply a ministerial procedure enacted by the running of time. *Stark Truss Co., Inc.* at 102-509. It may be entered by the clerk of court without hearing or argument and even in the face of any objections that may be made subsequent to notice.²

The defendants were in default for failing to answer within the 30 day time frame. In other words, even if the court were to have subsequently required service of the notice of default (which the defendants now have) the plaintiff would still be entitled to the entry of said default by the court since a timely answer was not filed absent good cause being shown by the court. It is important to note that while Rule 55(a) authorizes the clerk of court to enter default where a party fails to plead or "otherwise defend" the action, nothing therein precludes the court from entering default where appropriate. To suggest otherwise would relegate the time periods in which to file an answer or response somewhat meaningless whenever any type of appearance has been made. Moreover, when a timely answer has not been filed, a defendant must seek approval of the court for the filing of an untimely answer. The filing of an untimely answer does not, in and of itself, preclude the court from entering default. Accordingly, having heard counsel fully on the matter at this time after the defense has now been notified of the default paperwork, whether viewed as a renewed request to allow default to be entered by the court or whether to allow

² Because there is some disagreement about notice, the court may nonetheless determine (now that notice has been given) whether an untimely answer should be allowed or the defendants placed in default.

the filing of an untimely answer by the defendant and excuse the technical default will in either event turn on whether 'good cause' has been shown by the defendants

Therefore this court must determine if the defendants have met the burden of demonstrating "good cause" to this court. It first must be noted that there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due. "The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting defendant." *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). This premise is most clearly laid out in *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct. App. 1994) in which the defendants were charged with their attorney's failure to answer the complaint. The fact that the defendants are attorneys and/or a law firm only bolsters the argument that the defendants should be liable for their attorney's mistakes.

As previously mentioned, under Rule 55(c) SCRPC a default may be set aside for good cause shown. In this case, the issue before the court is that of whether default should be entered and not default judgment. The criteria for obtaining relief from a default judgment requires a showing of mistake, excusable neglect, newly discovered evidence, or misconduct of an adverse party. Rule 60(b) SCRPC. "As a practical matter, these factors are relevant under both rules. The promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the



other parties are relevant *New Hampshire Ins Co v Bey Corp*, 312 S C 47 50 435 S E.2d 377 379 (Cl App 1993) (quoting Harry M Lightsey & James F Flanagan *South Carolina Civil Procedure* 82 (1985) (citation omitted) Therefore the reason behind the defendants late answer should be considered in context with the other factors *Id*

However having considered these factors good cause does not exist for the defendants failure to timely file an answer based on South Carolina jurisprudence on attorney error as opposed to client error While the federal courts take a different approach from South Carolina when dealing with this type of distinction and at times excuse the entry of default based upon attorney error an argument could be made that even the federal approach would be consistent with our state s approach to attorney error where the clients are attorneys In addition, even if that federal approach to attorney error were applied herein there appears to this court to be no reasonable basis for defense counsel s assumption that the 30 day time to file an answer starts completely anew upon remand from the federal court as argued herein accordingly since no good cause has been demonstrated to the court explaining the late filing of the answer, the court declines to exercise its discretion to allow a late answer and directs that default be entered

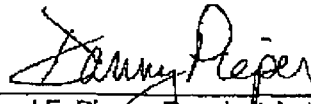
CONCLUSION

After a thorough review of the evidence presented arguments of counsel and the record herein this court denies the defendants' motion to set aside default and allow an untimely answer for the aforementioned reasons However,



the defendants should be given notice of any unliquidated damages hearing as provided by the South Carolina Rules of Civil Procedure. Since the matter was under advisement the clerk is hereby requested to send a filed copy of this order to counsel of record.

IT IS SO ORDERED


Daniel F. Pieper, Resident Judge

Charleston, South Carolina
February 6, 2007

Attorney for the Plaintiff: Frank Cise, Esquire
Attorney for the Defendant: Paul Hulsey, Esquire
2006-CP 10 1577 78ck



JULIE J ARMSTRONG
CLERK OF COURT C.P. & G.S.
100 BROAD STREET SUITE 100
CHARLESTON, S.C. 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

CISA FRANK M
622 JOHNNIE DODDS BLVD
MT PLEASANT, SC 29465

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

ORDEF ENTRY OF DEFAULT AS TO DEFNT PAUL HULSEY

THIS JUDGMENT WAS ENTERED ON THE 22ND DAY OF AUGUST, 2006 AND A COPY MAILED
FIRST CLASS THIS 24TH DAY OF AUGUST, 2006 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE
YOU MAY VIEW AND DOWNLOAD THIS DOCUMENT AT WWW3.CHARLESTONCOUNTY.ORG

CISA, FRANK M
622 JOHNNIE DODDS BLVD
MT PLEASANT, SC 29465

2006 CP 10 001578
LAWTON LIMEHOUSE JR
VS
HULSEY, PAUL H ETC

JULIE J ARMSTRONG
CLERK OF COURT C P & G S
100 BROAD STREET SUITE 105
CHARLESTON S.C 29401-2258
RETURN SERVICE REQUESTED



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CISA, FRANK M
622 JOHNNIE DODDS BLVD
MT PLEASANT, SC 29465

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

OREF ENTRY OF DEFAULT AS TO DEFNT THE HULSEY
LITIGATION GROUP LLC

THIS JUDGMENT WAS ENTERED ON THE 22ND DAY OF AUGUST, 2006 AND A COPY MAILED
FIRST CLASS THIS 24TH DAY OF AUGUST, 2006 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE
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CISA, FRANK M 622 JOHNNIE DODDS BLVD MT PLEASANT, SC 29465	2006-CP 10 001578 LAWTON LIMEHOUSE JR VS HULSEY, PAUL H ETC

JULIE J ARMSTRONG
CLERK OF COURT C P & G S
100 BROAD STREET SUITE 105
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CISA, FRANK M
622 JOHNNIE DODDS BLVD
MT PLEASANT SC 29465

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER ORDER ACTIONS ARE REMANDED TO STATE COURT

THIS JUDGMENT WAS ENTERED ON THE 21ST DAY OF JULY , 2006 AND A COPY MAILED
FIRST CLASS THIS 27TH DAY OF JULY , 2006 TO ALL COUNSEL OF RECORD AND/OR
ALL PERSONS ENTITLED TO RECEIVE NOTICE
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CISA, FRANK M
622 JOHNNIE DODDS BLVD
MT PLEASANT , SC 29465

2006 CP 10 001578
LAWTON LIMEHOUSE JR
VS
HULSEY, PAUL H ETC

De. CP-10-1577

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lawton Lunchaw, Jr.,
Plaintiff,
vs.
Paul H. Hulsey and The Hulsey
Litigation Group, LLC,
Defendants.

Civil Action No. 2-06-1379-CWH

BY

ORDER

JULIE J. ARSTRONG
CLERK OF COURT

2006 JUL 21 AM 9 23

FILED

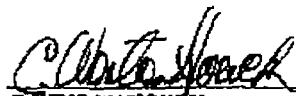
Lawton Lunchaw Sr.,
Plaintiff,
vs.
Paul H. Hulsey and The Hulsey
Litigation Group, LLC,
Defendants.

Civil Action No. 2-06-1380-CWH

On April 19, 2006, the plaintiffs commenced these actions in state court raising state law claims of libel and slander (collectively referred to as the "defamation claims"). The defendants removed the cases alleging that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. On June 2, 2006, the plaintiffs moved to remand the cases to state court.

After analyzing the complaints and briefs and hearing arguments from the parties, the Court holds that federal question jurisdiction is not present in these cases. Accordingly, both actions are remanded to state court.

AND IT IS SO ORDERED


C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

July 19, 2006
Charleston, South Carolina

CLOSED JURY

**U S District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE # 2 06-cv-01380-CWH
Internal Use Only**

Limehouse v Hulsey et al
Assigned to Honorable C Weston Houck
Cause 18 1964 Racketeering (RICO) Act

Date Filed 05/05/2006
Jury Demand Defendant
Nature of Suit 470
Racketeer/Corrupt Organization
Jurisdiction Federal Question

Plaintiff

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Email frank@cisadodds.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V

Defendant

Esq Paul H Hulsey

represented by **Abigail B Walsh**

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Hulsey Litigation Group
LLC, The**

represented by **Abigail B Walsh**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Paul H Hulsey
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William J Cook
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/05/2006	<u>1</u>	NOTICE OF REMOVAL by Hulsey Litigation Group LLC, The, Paul H Hulsey from State of South Carolina Court of Common Pleas, case number 06-CP-10-1577 (Filing fee \$ 350 receipt number 569670), filed by Hulsey Litigation Group LLC, The, Paul H Hulsey (jwol,) Additional attachment(s) added on 5/8/2006 (jwol,) (Entered 05/08/2006)
05/05/2006	<u>2</u>	CIVIL COVER SHEET - Private Entry (jwol,) (Entered 05/08/2006)
05/31/2006		***Staff notes Phone call from defendant's attorney re 26 01 Interrogatories Documents to be filed ASAP (crav) (Entered 05/31/2006)
06/01/2006	<u>3</u>	Defendants' Local Rule 26 01 Answers to Interrogatories by Hulsey Litigation Group LLC The (Hulsey Paul) (Entered 06/01/2006)
06/02/2006	<u>4</u>	MOTION to Remand to State Court by Lawton Limchouse, Sr Response to Motion due by 6/20/2006 No proposed order(Cisa Frank) (Entered 06/02/2006)
06/02/2006	<u>5</u>	RESPONSE in Support re <u>4</u> MOTION to Remand to State Court Response filed by Lawton Limchouse, Sr (Attachments # <u>1</u>)(Cisa Frank) (Entered 06/02/2006)
06/02/2006	<u>6</u>	RESPONSE in Support re <u>4</u> MOTION to Remand to State Court Response filed by Lawton Limchouse Sr (Attachments # <u>1</u> Exhibit Plaintiff's Complaint)(Cisa, Frank) (Entered 06/02/2006)
06/06/2006	<u>7</u>	RESPONSE in Opposition re <u>4</u> MOTION to Remand to State Court Response filed by Paul H Hulsey Reply to Response to Motion due by 6/13/2006 plus 3 calendar days per FRCP 6(e) (Attachments # <u>1</u> Exhibit A)(Hulsey Paul) (Entered 06/06/2006)
06/14/2006		***Deadlines terminated. Reply to Response to Motion (crav) (Entered 06/14/2006)

06/23/2006	<u>8</u>	NOTICE of Hearing on Motion 4 MOTION to Remand to State Court: Motion Hearing set for 7/19/2006 11 00 AM in Charleston Courtroom #4, U S Court House 85 Broad St, Charleston before Honorable C Weston Houck. (jdod,) (Entered 06/23/2006)
06/23/2006	<u>9</u>	PRE-SCHEDULING ORDER Within 30 days from the date of this order, the plaintiff shall forward to chambers and serve on all parties the information required by Rule 26(a)(1) and electronically file the information required by Rule 26(f) of the FRCP and LCR 26 03 The defendant shall do likewise within 45 days of the date of this order Signed by Judge C Weston Houck on 6/23/06 (erav) (Entered 06/23/2006)
07/17/2006	<u>10</u>	MOTION to Withdraw <i>Appearance of Abigail B Walsh</i> by Hulsey Litigation Group LLC The, Paul H Hulsey Response to Motion due by 8/4/2006 No proposed order(Hulsey Paul) (Entered 07/17/2006)
07/20/2006		***Deadlines terminated, Motion Hearing (erav) (Entered 07/20/2006)
07/20/2006	<u>11</u>	ORDER granting 4 Motion to Remand to State Court, Charleston County Clerk's Notice: Attorneys are responsible for supplementing the State Record with all documents filed in Federal Court. Signed by Judge C Weston Houck on 7/19/06 (erav) (Entered 07/20/2006)

CHARLESTON COUNTY

COMMON PLEAS

CIVIL ACTION DOCKET AS OF 11/10/2010

PLAINTIFF(S) LIMEHOUSE, LAWTON JR

-VS-

DEFENDANT(S) HULSEY PAUL H ETC

CASE ID 2006-CP-10-001578

FILING 04/19/2006

ACTION ASSAULT/SLANDER/LIBEL

JUDGE ROGER M YOUNG

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001	AT	CISA FRANK M 858 LOWCOUNTRY BLVD STE 101 MT PLEASANT SC 29464 FAX (843) 881-5433	(843) 881-6530
001	PL	LIMEHOUSE LAWTON JR	
002	AT	HULSEY, PAUL H 2 WHARFIDE 3 CHARLESTON HARBOR CHARLESTON SC 29401 FAX (843) 723-5307	(843) 723-5303
002	DF	HULSEY, PAUL H ETC	
003	AT	HOOD JAMES BERNARD P O BOX 1508 CHARLESTON SC 29401 FAX (843) 722-1630	(843) 577-4435
003	DF	HULSEY LITIGATION GROUP LLC THE ETAL	
004	AT	HOOD ROBERT H PO BOX 1508 CHARLESTON SC 29402 FAX (843) 722-1630	(843) 577-4435
005	AT	LEWIS A CAMDEN PO BOX 11208 COLUMBIA SC 29211	(803) 771-8000
006	AT	KING, ARIAIL E P O BOX 11208 COLUMBIA SC 29211 FAX (803) 733-3534	(803) 771-8000

DATE
APR 13 2009
APR 13 2009

***** EVENTS IN CASE *****
MOTION HEARING/MOTION DOCKET
NONJURY TRIAL

DATE

***** PROPERTY IN CASE *****

DATE
JAN 29 2010

***** PROGRESS IN CASE *****

FEES

NOTICE OF APPEAL-APEALLING ORDERS & JUDGMENTS ON
2-7-07 5-22-08 11-17-09 & 1-7-10 BY JUDGE PIEPER & JUDGE YOUNG
& PROOF OF SERVICE
JAN 27 2010
NOTICE OF APPEAL-APEALLING ORDERS & JUDGMENTS &
CERT/SERV
JAN 13 2010
FORM4 IN RE ORDER 20100107 9980 MAILED FIRST CLASS
JAN 13 2010
FORM4 IN RE ORDER 20100107 9990 MAILED FIRST CLASS
JAN 07 2010
ORDER REVIEWING AWARD OF PUNITIVE DAMAGES
JAN 07 2010
ORDER DENYING DEFNT S POST TRIAL MOTIONS
NOV 23 2009 AS TO HOOD R (20)
DEFNTS' POST-TRIAL MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE, MOTION FOR
RELIEF FROM VOID JUDGMENT & CERT/SERV
NOV 23 2009 AS TO HOOD R (20)
DEFNTS' POST-TRIAL MOTIN FOR RELIEF FROM JUDGMENT
BASED ON MISTAKE AND/OR EXCUSABLE NEGLECT & CERT/SERV
NOV 23 2009 AS TO HOOD, R (20)
DEFNTS POST-TRIAL MOTION FOR NEW TRIAL ON
PUNITIVE DAMAGES & CERT/SERV
NOV 23 2009 AS TO HOOD R (20)
DEFNTS POST-TRIAL MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT OR FOR NEW TRIAL ABSOLUTE &
CERT/SERV
NOV 20 2009
FORM4 IN RE ORDER 20091117 9990 MAILED FIRST CLASS
NOV 17 2009 AS TO RE HULSEY LITIGATION GROUP LL
ORDER-JURY VERDICT AWARING DAMAGES TO PLTFF
NOV 17 2009 AS TO RE HULSEY LITIGATION GROUP LL
JDGMT IN THE AMOUNT OF 3 600 000 00
NOV 17 2009 AS TO RE HULSEY LITIGATION GROUP LL
CISA, FRANK M
NOV 17 2009 AS TO RE HULSEY, PAUL H ETC
ORDER-JURY VERDICT AWARING DAMAGES TO PLTFF
NOV 17 2009 AS TO RE HULSEY PAUL H ETC
JDGMT IN THE AMOUNT OF 3 600 000 00
NOV 17 2009 AS TO RE HULSEY, PAUL H ETC
CISA, FRANK M
NOV 17 2009
ORDER-JURY VERDICT AWARING ACTUAL AND PUNITIVE
DAMAGES TO PLTFF
NOV 13 2009
EVIDENCE - ONE FOLDER IN CP CABINET
NOV 09 2009 AS TO HOOD R (15)
JOINT MOTION TO BIFURCATE THE COMPENSATORY &
PUNITIVE PHASES OF THE DAMAGES HEARING & CERT/SERV
NOV 09 2009
DEFNTS JOINT RESPONSE IN OPPOSITION TO PLNTFF S
MOTION IN LIMINE & CERT/SERV
NOV 09 2009 AS TO HOOD, J (15)
MOTION IN LIMINE TO PRECLUDE TESTIMONY THAT THE
ALLEGED DEFAMATORY STATEMENT WAS ABOUT THE PLNTFF & CERT/SERV
NOV 09 2009 AS TO LEWIS A (15)
MOTION IN LIMINE TO PRECLUDE TESTIMONY THAT THE
ALLEGED DEFAMATORY STATEMENT WAS ABOUT PLNTFF & CERT/SERV
NOV 09 2009 AS TO HOOD J (15)

MOTION IN LIMINE TO EXCLUDE ANY NEGATIVE COMMENTS
REGARDING DEFAULT & CERT/SERV
NOV 09 2009 AS TO LEWIS A (15)
MOTION IN LIMINE TO EXCLUDE ANY NEGATIVE COMMENTS
REGARDING DEFAULT & CERT/SERV
NOV 09 2009 AS TO LEWIS A (15)
MOTION IN LIMINE TO EXCLUDE ANY EVIDENCE OF DAMAGE
TO PLNTFF'S REPUTATION & CERT/SERV
NOV 09 2009 AS TO LEWIS A (15)
MOTION IN LIMINE TO EXCLUDE ANY EVIDENCE OF DAMAGE
TO PLNTFF S REPUTATION & CERT/SERV
NOV 09 2009 AS TO HOOD J (15)
MOTION TO DISMISS CLAIMS AS TO THE BUSINESS
DAMAGES AND PECUNIARY LOSSES SUFFERED BY PLNTFF'S BUSINESS OR IN
THE ALTERNATIVE MOTION IN LIMINE TO EXCLUDE DAMAGES & PECUNIARY
LOSSES TO PLNTFF S BUSINESS & CERT/SERV
NOV 09 2009 AS TO LEWIS A (15)
MOTION TO DISMISS CLAIMS AS TO THE BUSINESS
DAMAGES AND PECUNIARY LOSSES SUFFERED BY PLNTFF S BUSINESS OR IN
THE ALTERNATIVE MOTION IN LIMINE TO EXCLUDE DAMAGES & PECUNIARY
LOSSES TO PLNTFF S BUSINESS & CERT/SERV
NOV 04 2009 AS TO CISA F (15)
NOT/MOT IN LIMINE & CERT/SERV
OCT 21 2009 AS TO HOOD J
JOINT MOTION TO STAY & CERT/SERV
OCT 21 2009 AS TO HOOD J
JOINT MOTION FOR CONTINUANCE & CERT/SERV
OCT 21 2009
NOTICE OF APPEARANCE-OF ATTY ROBERT HOOD ON
BEHALF OF DEFNT THE HULSEY LITIGATION GROUP LLC & CERT/SERV
JUL 23 2009 AS TO KING A (10)
NOT/MOT TO COMPEL & CERT/SERV
JUN 16 2009
FORM4 IN RE ORDER 20090610 9990 MAILED FIRST CLASS
JUN 10 2009
ORDER-DEFNT S MOTION TO STAY JUDGMENT & CASE
PENDING APPEAL IS DENIED CASE TO PROCEED TO TRIAL THE WEEK OF
9/7/09 AS SET BY JUDGE DEADRA JEFFERSON
APR 10 2009
FORM4 IN RE RETRN 20090406 9990 MAILED FIRST CLASS
APR 09 2009
NOTICE OF APPEARANCE OF ATTY A LEWIS & ATTY A KING
ON BEHALF OF DEFNT PAUL H HULSEY & CERT/SERV
APR 06 2009
RETURN TO MOTION TO QUASH DEFAULT DAMAGES HEARING
& NOTICE OF DEFAUL DAMAGES HEARING & CRT/MAIL
APR 01 2009 AS TO HOOD J (1 HOUR)
NOT/MOT TO QUASH DEFAULT DAMAGES HEARING & CRT/SRV
MAR 13 2009 AS TO HOOD R
ANSWER OF DEFNTS & CERT/SERV
MAR 05 2009
ORDER FR/ DISTRICT CRT REMANDING CASES TO STATE
CRT
FEB 27 2009 AS TO CISA F
NOT/MOT FOR STATUS CONFERENCE & CRT/MAIL
JAN 27 2009 AS TO HOOD J (20)
DEFNTS' MOTION TO STAY & CERT/SERV
NOV 05 2008
ORDER FR/ SC CRT OF APPEALS-APPEAL DISMISSED
OCT 30 2008

FORM4 IN RE ORDER 20081024 9990 MAILED FIRST CLASS
OCT 24 2008
ORDER FR/ CRT OF APPEALS-APPEAL DISMISSED
SEP 19 2008
ORDER FR/ CRT OF APPEAL DENYING PETITION F/
REHEARING
AUG 06 2008
PETITION FOR A WRIT OF CERTIORARI & CERT/SERV
JUL 29 2008
ORDER FR/ COURT OF APPEAL DISMISSING APPEAL
MAY 30 2008
FORM4 IN RE ORDER 20080522 9990 MAILED FIRST CLASS
MAY 23 2008
NOTICE OF APPEAL-APPEALING ORDER OF JUDGE YOUNG
DATED MAY 22 08 & ORDER OF JUDGE PIEPER DATED FEB 7 08 &
CERT/SERV
MAY 22 2008
ORDER DENYING DEFNTS MOTION TO DISMISS F/ LACK
OF SUBJECT MATTER JURISDICTION
FEB 15 2008 AS TO HOOD R (15)
DEFNTS NOT/MOT TO DISMISS F/ LACK OF SUBJECT
MATTER & CERT/SERV
FEB 04 2008 AS TO HOOD J
NOT/MOT IN LIMINE & CRT/SRV
FEB 01 2008 AS TO CISA F
NOT/MOT IN LIMINE
JAN 11 2008 AS TO HOOD, JAMES (20 MIN)
DEFNTS NOT/MOT TO COMPEL & CERT/SERV
JAN 04 2008 AS TO HOOD JAMES
DEFNTS MOTION TO CONSOLIDATE
MAY 23 2007
FORM4 IN RE ORDER 20070521 9990 MAILED FIRST CLASS
MAY 21 2007
ORDER-DEFNTS ARE DIRECTED TO TURN OVER THE
FINANCIAL STATEMENTS FROM THE BANK OF AMERICA REQUESTED BY THE
PLNTFF ETC
MAR 02 2007 AS TO HOOD, J (20)
MOTION TO QUASH & CRT/SRV
FEB 27 2007 AS TO OF DEFNTS & CERT/SERV
NOTICE OF APPEARANCE OF ATTY ROBERT HOOD ON BEHALF
FEB 14 2007
FORM4 IN RE ORDER 20070207 9990 MAILED FIRST CLASS
FEB 07 2007
ORDER-CRT DENIES DEFNTS MOT TO SET ASIDE DEFAULT
AUG 29 2006 AS TO HULSEY P (60)
MOTION TO SET ASIDE DEFAULT & CRT/SRV
AUG 29 2006 AS TO HULSEY P
ANSWER OF DEFNTS & CRT/SRV
AUG 24 2006
FORM4 IN RE ORDEF 20060822 9960 MAILED FIRST CLASS
AUG 24 2006
FORM4 IN RE OREF 20060822 9970 MAILED FIRST CLASS
AUG 22 2006
ENTRY OF DEFAULT AS TO DEFNT PAUL HULSEY
AUG 22 2006
ENTRY OF DEFAULT AS TO DEFNT THE HULSEY
LITIGATION GROUP LLC
AUG 21 2006
REQUEST FOR ENTRY OF DEFAULT
AUG 21 2006

AFFIDAVIT OF DEFAULT
AUG 21 2006
AFFIDAVIT OF SERVICE
AUG 21 2006
REQUEST FOR ENTRY OF DEFAULT
AUG 21 2006
AFFIDAVIT OF DEFAULT
AUG 21 2006
AFFIDAVIT OF SERVICE
JUL 27 2006
FORM4 IN RE ORDER 20060721 9990 MAILED FIRST CLASS
JUL 21 2006
ORDER ACTIONS ARE REMANDED TO STATE COURT
MAY 11 2006
FORM4 IN RE NOREM 20060505 9990 MAILED FIRST CLASS
MAY 05 2006
NOTICE OF REMOVAL TO DISTRICT COURT & CERT/SERV
APR 19 2006
SUMMONS & COMPLAINT
APR 19 2006
RECEIPT #06-5015
APR 19 2006
PAID \$150 00

DOCKET TOTAL

00

CLOSED, JURY

**U S District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE # 2 06-cv-01379-CWH**

Limehouse v Hulsey et al
Assigned to Honorable C Weston Houck
Cause 18 1964 Racketeering (RICO) Act

Date Filed 05/05/2006
Date Terminated 07/20/2006
Jury Demand Defendant
Nature of Suit 470 Racketeer/Corrupt
Organization
Jurisdiction Federal Question

Plaintiff

Lawton Limehouse, Jr

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V

Defendant

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Defendant

Hulsey Litigation Group LLC, The

represented by **Abigail B Walsh**
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TERMINATED 07/19/2006
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Paul H Hulsey
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William J Cook
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/05/2006	<u>1</u>	NOTICE OF REMOVAL by Hulsey Litigation Group LLC The Paul H Hulsey from Court of Common Pleas Charleston County, case number 06-CP 10-1578 (Filing fee \$ 350 receipt number 569613) filed by Hulsey Litigation Group LLC, The, Paul H Hulsey (Attachments # <u>1</u> Exhibit State Court Pleadings)(crav,) (Entered 05/05/2006)
06/01/2006	<u>3</u>	<i>Defendants'</i> Local Rule 26 01 Answers to Interrogatories by Hulsey Litigation Group LLC The (Hulsey, Paul) (Entered 06/01/2006)
06/02/2006	<u>4</u>	MOTION to Remand by Lawton Limehouse, Jr Response to Motion due by 6/20/2006 No proposed order(Cisa, Frank) (Entered 06/02/2006)
06/02/2006	<u>5</u>	RESPONSE in Support re <u>4</u> MOTION to Remand Response filed by Lawton Limehouse Jr (Attachments # <u>1</u>)(Cisa, Frank) (Entered 06/02/2006)
06/02/2006	<u>6</u>	MOTION to Remand by Lawton Limehouse, Jr Response to Motion due by 6/20/2006 No proposed order(Cisa, Frank) (Entered 06/02/2006)
06/02/2006	<u>7</u>	RESPONSE in Support re <u>6</u> MOTION to Remand Response filed by Lawton Limehouse, Jr (Attachments # <u>1</u>)(Cisa, Frank) (Entered 06/02/2006)

06/02/2006	<u>8</u>	RESPONSE in Support re <u>4</u> MOTION to Remand <u>6</u> MOTION to Remand Response filed by Lawton Limehouse, Jr (Attachments # <u>1</u> Exhibit Plaintiff's Complaint)(Cisa, Frank) (Entered 06/02/2006)
06/06/2006	<u>9</u>	RESPONSE in Opposition re <u>4</u> MOTION to Remand Response filed by Paul H Hulsey Reply to Response to Motion due by 6/13/2006 plus 3 calendar days per FRCvP 6(e) (Attachments # <u>1</u> Exhibit A)(Hulsey, Paul) (Entered 06/06/2006)
06/21/2006	<u>10</u>	NOTICE of Hearing on Motion <u>4</u> MOTION to Remand <u>6</u> MOTION to Remand Motion Hearing set for 7/19/2006 11 00 AM in Charleston Courtroom #4, U S Court House, 85 Broad St, Charleston before Honorable C Weston Houck. (jdod,) (Entered 06/21/2006)
06/23/2006	<u>11</u>	NOTICE of Hearing on Motion <u>4</u> MOTION to Remand <u>6</u> MOTION to Remand Motion Hearing set for 7/19/2006 11 00 AM in Charleston Courtroom #4, U S Court House, 85 Broad St, Charleston before Honorable C Weston Houck. (jdod) (Entered 06/23/2006)
06/23/2006	<u>12</u>	PRE SCHEDULING ORDER. Within 30 days from the date of this order, the plaintiff shall forward to chambers and serve on all parties the information required by Rule 26(a)(1) and electronically file the information required by Rule 26(f) of the FRCP and LCR 26 03 The defendant shall do likewise within 45 days of the date of this order Signed by Judge C Weston Houck on 6/23/06 (erav,) (Entered 06/23/2006)
06/23/2006		ENTRY DELETED Document Number 13 Corrected Filing Document Number 12 Modified filing date to that of original filing 6/23/06 (erav,) (Entered 06/23/2006)
07/17/2006	<u>13</u>	MOTION to Withdraw <i>Appearance of Abigail B Walsh</i> by Hulsey Litigation Group LLC, The, Paul H Hulsey Response to Motion due by 8/4/2006 No proposed order(Hulsey, Paul) (Entered 07/17/2006)
07/19/2006	<u>15</u>	Minute Entry for proceedings held before Judge C Weston Houck Motion Hearing held on 7/19/2006 re <u>4</u> MOTION to Remand filed by Lawton Limehouse, Jr, <u>6</u> MOTION to Remand filed by Lawton Limehouse, Jr Court grants motion to remand and will fill a written order the Court also grants the <u>13</u> motion to withdraw by Abigail B Walsh. (Court Reporter Janet Collins) (gloh,) Modified on 7/20/2006 (gloh,) (Entered 07/20/2006)
07/20/2006	<u>14</u>	ORDER granting <u>4</u> Motion to Remand and granting <u>6</u> Motion to Remand Signed by Judge C Weston Houck on 7/19/06 (wwil,) (Entered 07/20/2006)

PACER Service Center			
Transaction Receipt			
11/10/2010 09 44 01			
PACER Logon	ho0041	Client Code	379 000
Description	Docket Report	Search Criteria	2 06-cv-01379-CWH
Billable Pages	3	Cost	0 24

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LAWTON LIMEHOUSE, JR.

Plaintiff(s)

vs

PAUL H. HULSEY, and THE HULSEY
LITIGATION GROUP, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

06 - CP - 10 - 1578

(Please Print)

Submitted By FRANK M. CISA
Address 622 JOHNNIE DODDS BLVD

MT PLEASANT SC 29464

SC Bar #

Telephone # (843) 881 3700

Fax # (843) 881 2511

Other

E mail frank@cisdodds.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint ☐ NON JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☐ This case is exempt from ADR (certificate attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Other (299)	☒ Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanics Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
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Submitting Party Signature



Date 04/19/2006

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FOR MANDATED ADR COUNTIES ONLY

Florence, Horry Lexington, Richland, Greenville**, and Anderson**

**** Contact Respective County Clerk of Court for modified ADR Program Rules**

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

LAWTON LIMEHOUSE, JR)

Plaintiff,)

vs)

PAUL H HULSEY, and)
THE HUSLEY LITIGATION)
GROUP, LLC)

Defendant)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO 06-CP-10 1578

SUMMONS

BY JULIE A. STRONG
CLERK OF COURT
2006 APR 19 PM 1:43

FILED

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your Answer upon the
subscribers at their office located at 622 Johnnie Dodds Boulevard South Carolina, 29464 within
thirty (30) days after the service hereof, exclusive of the day of such service and if you fail to
answer the Complaint within the time aforesaid, judgment by default will be rendered against
you for the relief demanded in the Complaint

CISA & DODDS, LLP

Frank M Cisa
622 Johnnie Dodds Blvd
Mt Pleasant, SC 29464
(843)881-3700

April 19th, 2006

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
LAWTON LIMEHOUSE, Jr)
)
Plaintiff)
)
vs)
)
PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
)
Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 06 CP 10 1578

COMPLAINT

(DEFAMATION)

Jury Trial Demanded

BY _____

JULIE ANNE TRONG
CLERK OF COURT

2006 APR 19 PM 1:43

FILED

The Plaintiff, above-named, complaining of the Defendants above named, would respectfully show unto this honorable Court as follows

PARTIES

- 1 The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina and at all times hereinafter mentioned was engaged in business in the County of Charleston, South Carolina
- 2 That the Defendant, Paul H. Hulsey, was and is a licensed practicing attorney in the State of South Carolina having his principal place of business in the County of Charleston, State of South Carolina and at all times hereinafter mentioned was an agent, employee, servant and member of the Defendant, The Hulsey Litigation Group LLC
- 3 That the Defendant, The Hulsey Litigation Group, LLC, is a corporation organized and existing under the Laws of the State of South Carolina and at all times hereinafter mentioned was and is operated as a law firm with its principal

Handwritten initials

place of business in the County of Charleston State of South Carolina

JURISDICTION AND VENUE

- 4 That this Court has jurisdiction over the parties and subject matter of this action and venue is proper in that the Plaintiff is a resident of Charleston County, South Carolina, the Defendant, Paul H. Hulsey, is a resident of Charleston County, South Carolina and owns property and conducts business in Charleston County South Carolina, and the Defendant, The Hulsey Litigation Group, LLC has its principal place of business in Charleston County South Carolina

FACTUAL BACKGROUND

- 5 The Plaintiff Lawton Limehouse Jr. was born in Charleston County and has been a life long resident of Charleston County. The Plaintiff has friends, relatives, acquaintances and business contacts living in Charleston County, has raised a family in Charleston County, and has worked in Charleston County the majority of his life.
- 6 That heretofore in 1999 Lawton Limehouse, Jr. and his father incorporated a staffing agency known as L&L Services, LLC. Thereafter he and his father organized and incorporated another staffing agency known as WLL LLC.
- 7 That the aforesaid staffing agencies employed many individuals relative to the operation of the staffing agencies.
- 8 That since 1999, the Plaintiff Lawton Limehouse Jr. has worked and devoted his full time and efforts to building and establishing the aforesaid staffing agencies.
- 9 That heretofore in 2004 the Defendant, Paul H. Hulsey, individually and as an

202

agent and servant of The Hulsey Litigation Group LLC filed a class action lawsuit on behalf of certain individuals, against the Plaintiff, L&L Services LLC and WLL, LLC which said lawsuit alleged improper acts and conduct on part of the Plaintiff as well as L&L Services, LLC and WLL, LLC

10 On or about April 23, 2004 the Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post & Courier staff. The Post & Courier is a widely distributed newspaper in Charleston County and throughout other areas of the state of South Carolina.

11 During the news conference and or during the Defendant, Paul H. Hulsey's meeting with members of the news media including a reporter from the Post & Courier staff, the Defendant Paul H. Hulsey made false and defamatory statements concerning the Plaintiff with the knowledge and intent that said statements be published by the Post & Courier newspaper as well as by other media located in the Charleston County area which statements included the following to wit:

- 247
- a That the Plaintiff had engaged in a classic racketeering scheme
 - b that the Plaintiff's conduct set the community back 150 years,
 - c that the Plaintiff engaged in a blatant case of indentured servitude,
 - d that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano

12 That Tony Soprano is portrayed as a gangster on the critically acclaimed, Emmy

and Peabody winning HBO series "The Sopranos" which is a made for TV series which is aired and shown on the Home Box Office network and has been aired and shown for the past five (5) years and continues to be aired and shown on Home Box Office network

13 That Tony Soprano in the TV series "the Sopranos" is depicted as

- a a gangster and mobster
- b a murderer
- c a person engaged in prostitution,
- d a person engaged in gambling,
- e a person engaged in extortion,
- f a person engaged in racketeering
- g a person who operates a strip club,
- h a person who extorts money from people through physical violence as well as other means
- i a person who uses obscene vulgar and profane language

14 The aforesaid statements were made by the Defendant, Paul H. Hulsey, concerning the Plaintiff, in his individual capacity as well as an agent, servant, employee and member of the Defendant, The Hulsey Litigation Group LLC

15 The Hulsey Litigation Group, LLC is jointly and severally liable for the acts and omissions of the Defendant, Paul H. Hulsey as referred to herein

16 That the statements made by the Defendant, Paul H. Hulsey as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against

the Plaintiff and Plaintiff's companies and also with the intent to attract individuals who would become members of the class action suit so the Defendants could potentially earn large sums of money as legal fees

17 These statements made by the Defendant, Paul H. Hulsey, as aforesaid were not privileged, were false and defamatory and were intended to degrade the Plaintiff and did harm and reduce his character and reputation in the estimation of his friends, acquaintances, business associates, relatives and the public at large and caused the Plaintiff to experience great humiliation, embarrassment and intended to and did in fact disgrace the Plaintiff, and render him odious, contemptible and subject to ridicule

18 That at the time the Defendant, Paul H. Hulsey made the aforesaid statements concerning the Plaintiff he knew or in the exercise of reasonable care and diligence should have known that said statements would be published in the Post & Courier as well as by other media and in fact said statements were published by the Post & Courier on April 24, 2004

19 That the aforesaid statements made by the Defendant have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation and further the Plaintiff has suffered special damages in that he has lost income and has lost his businesses all to his damage and detriment

FOR A FIRST CAUSE OF ACTION

(As to both Defendants Defamation, Slander and Liable)

20 Each and every allegation contained in paragraphs 1-19 above are incorporated

herein by express reference as though fully set forth

- 21 That the aforesaid statements made by the Defendant, Paul H. Hulsey, had a defamatory meaning in that the statements impeached the honesty, integrity, virtue and reputation of the Plaintiff and exposed him to public hatred, contempt, ridicule, caused him to be shunned or avoided, and injured his office, business and occupation
- 22 That the statements made and published by the Defendant, Paul H. Hulsey, were made and published with actual or implied malice by the Defendant in an effort to bolster the allegations of the class action lawsuit which he filed against the Plaintiff and Plaintiff's companies so that he and the Defendant, The Hulsey Litigation Group, LLC, could increase their potential for earning large sums of money from the lawsuit as legal fees
- 23 That the statements made by the Defendant, Paul H. Hulsey, as aforesaid were false
- 24 That the aforesaid defamatory statements made by the Defendant, Paul H. Hulsey, and communicated to representatives of the Post & Courier and other representatives of the media were made by the Defendant, Paul H. Hulsey, with the expectation that said statements would be published in the media which statements were published by representatives of the press including but not limited to the Post & Courier
- 25 That the Defendant has engaged in libel per se and slander per se in making the aforesaid defamatory statements concerning the Plaintiff and his businesses with

2m
607

the expectation that the aforesaid statement would be published by the news media

26 The Plaintiff has been damaged as aforesaid by the defamatory statements made by the Defendant, Paul H. Hulsey, who intended and expected the statements to be published in the news media and more particularly the Post & Courier. The damages included the Plaintiff's embarrassment, humiliation, mental suffering, caused the Plaintiff injury in his office, business and occupation and further the Plaintiff has expended large sums of money in attorney's fees defending against the defamatory statements made by the Defendants.

27 That the Plaintiff seeks actual, general and special damages against the Defendants as well as punitive damages because the Defendants' actions were intentional or made with the reckless disregard of the Plaintiff's rights in an amount to be determined by the jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severely, for actual damages including general and special damages and punitive damages and the costs of this action.

CISA & DODDS, LLP



Frank M. Cisa
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
(843) 881-3700

Mt. Pleasant, SC
This 19th day of April, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CIVIL ACTION NO 06-CP-10-1578

Lawton Limehouse Jr

Plaintiff

v

Paul H Hulsey, and The
Hulsey Litigation Group
LLC,

Defendants

FILED
2006 MAY -5 PM 4 48
JULIE Y. McSTRONG
CLERK OF COURT
BY _____

NOTICE OF REMOVAL

Defendant Hulsey Litigation Group LLC ("HLG") and Defendant Paul H Hulsey submit this Notice of Removal of this action to the United States District Court for the District of South Carolina, Charleston Division, pursuant to 28 U S C § 1441 and 1446. The Court should note that litigation is already pending before this Court (*Flores v Limehouse* Civil No. 2:04-1295-12) involving the issues from which the Plaintiff's Complaint arises.

In addition, this Court has already had an opportunity in that litigation to consider and specifically address the issues raised by the Plaintiff's Complaint. See Docket Entry Nos. 23 & 24 (Motion for an Order Prohibiting Extrajudicial Statements). In support of this removal, HLG states the following:

1. Plaintiff commenced this action on or about April 19, 2006, by filing a summons and complaint with the Charleston County Clerk of Court (the "State Court Action"). The State Court Action was assigned Civil Action Number 06-CP-10-1578. A copy of the Summons, Complaint, and all other process pleadings and

orders served upon HLG and Mr Hulsey are attached hereto as Exhibit A as provided in 28 U S C § 1446(a)

- 2 On April 19, 2006, Plaintiff served HLG with a copy of the Summons and Complaint On April 20, 2006, Plaintiff served Paul H Hulsey with a copy of the Summons and Complaint Aside from the material in Exhibit A neither HLG nor Mr Hulsey is aware of any other process, pleadings or orders served upon them in this action
- 3 HLG and Mr Hulsey file this Notice of Removal within one year of the date the action was originally filed and within thirty days of their receipt of the Complaint Removal is accordingly timely
- 4 Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal In addition pursuant to this Act, the Notice need not be verified
- 5 This Notice of Removal is signed pursuant to Rule 11, Fed R Civ P See 38 U S C § 1446(a)
- 6 Promptly after filing this Notice of Removal HLG and Mr Hulsey shall give written notice of the removal to Plaintiff by and through his designated counsel, and to the Charleston County Clerk of Court for the Court of Common Pleas as provided in 28 U S C § 1446(d) A copy of the Notice to Plaintiff and to the Clerk of Court of Removal of Civil Action to Federal Court (without exhibits) is attached hereto as Exhibit B

JURISDICTION

- 7 This Court has original jurisdiction over this civil action pursuant to 28 U S C § 1331 (federal question) in that Plaintiff's cause of action arises under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce)

FEDERAL QUESTION JURISDICTION

- 8 A district court has original jurisdiction over cases ' arising under ' federal law 28 U S C § 1331
- 9 A case arises under federal law if it requires interpretation of a federal question, in this case, namely the applicability of civil RICO to the matters already pending before this Court in the *Flores* litigation Exhibit C
- 10 Although Plaintiff has crafted his allegations under the guise of an action for 'Defamation, Slander, and [sic] Liable,' in reality the action is based upon the Plaintiff's involvement in a racketeering scheme arising under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce) which is already pending before this Court
- 11 The Plaintiff's allegations are governed solely by an interpretation of federal law which is already pending before this Court Merely re crafting the allegations under a different label does not divest this Court of its continuing jurisdiction over a matter of interpretation of federal law, which requires this Court to interpret RICO and is sufficient to render this action within the jurisdiction of the federal courts
- 12 Therefore this action is removable to this Court pursuant to 28 U S C § 1441

VENUE

13 Removal to the United States District Court for the District of South Carolina, Charleston Division, is proper because the Complaint was filed in Charleston County, South Carolina 28 U S C § 1441(a)

WHEREFORE, Defendant HLG gives notice that the above described action pending against it in the Court of Common Pleas Charleston County is removed to this Court

DATED May 5 2006

s/ Paul H. Hulsey
Paul H. Hulsey
William J. Cook, USDC SC No. 7167
Abigail B. Walsh, USDC SC No. 71291
HULSEY LITIGATION GROUP, LLC
Charleston Harbor
2 Wharfside 3
Charleston, SC 29401
Tel 843-723-5303
Fax 843-723-5307

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served upon counsel of record, via United States mail to the following

Frank M. Cisa, Esq
CISA & DODDS, LLP
622 Johnnie Dodds Blvd
Mt Pleasant, SC 29464
(843) 881-3700

s/ Paul H. Hulsey
Paul H. Hulsey

May 5, 2006
Charleston, SC

06-1578

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Paul H. Hulsey

May 5, 2006
Charleston, SC

FILED
2006 MAY -5 PM 4 48
JULIE J. ARISTROING
CLERK OF COURT
BY _____

EXHIBIT
A

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LAWTON LIMEHOUSE, JR.

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06 - CP - 10 - 1578

(Please Print)

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Submitting Party Signature



Date 04/19/2006

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FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

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COUNTY OF CHARLESTON)
LAWTON LIMEHOUSE JR.)
Plaintiff,)
vs)
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THE HUSLEY LITIGATION)
GROUP, LLC)
Defendant)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO

SUMMONS

FILED
2006 APR 19 PM 1:44
JULIE A. HONG
CLERK OF COURT
BY _____

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their office located at 622 Johnnie Dodds Boulevard, South Carolina, 29464 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

CISA & DODDS LLP


Frank M. Cisa
622 Johnnie Dodds Blvd
Mt Pleasant, SC 29464
(843)881 3700

April 19th, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO

LAWTON LIMEHOUSE, Jr)
Plaintiff,)

vs)

PAUL H HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
Defendants)

COMPLAINT

(DEFAMATION)

Jury Trial Demanded

2006 APR 19 PM 1:44
JULIE
CLERK OF COURT
BY

FILED

The Plaintiff, above-named, complaining of the Defendants above-named, would respectfully show unto this honorable Court as follows

PARTIES

- 1 The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina and at all times hereinafter mentioned was engaged in business in the County of Charleston, South Carolina.
- 2 That the Defendant, Paul H. Hulsey, was and is a licensed practicing attorney in the State of South Carolina having his principal place of business in the County of Charleston, State of South Carolina and at all times hereinafter mentioned was an agent, employee, servant and member of the Defendant, The Hulsey Litigation Group, LLC
- 3 That the Defendant, The Hulsey Litigation Group, LLC, is a corporation organized and existing under the Laws of the State of South Carolina and at all times hereinafter mentioned was and is operated as a law firm with its principal

2006
4-18-06

place of business in the County of Charleston, State of South Carolina.

JURISDICTION AND VENUE

- 4 That this Court has jurisdiction over the parties and subject matter of this action and venue is proper in that the Plaintiff is a resident of Charleston County, South Carolina, the Defendant, Paul H. Hulsey, is a resident of Charleston County, South Carolina and owns property and conducts business in Charleston County South Carolina, and the Defendant, The Hulsey Litigation Group LLC has its principal place of business in Charleston County, South Carolina.

FACTUAL BACKGROUND

- 5 The Plaintiff, Lawton Limehouse, Jr, was born in Charleston County and has been a life long resident of Charleston County. The Plaintiff has friends, relatives, acquaintances and business contacts living in Charleston County, has raised a family in Charleston County, and has worked in Charleston County the majority of his life.
- 6 That heretofore, in 1999 Lawton Limehouse, Jr, and his father incorporated a staffing agency known as L&L Services, LLC. Thereafter he and his father organized and incorporated another staffing agency known as WLL, LLC.
- 7 That the aforesaid staffing agencies employed many individuals relative to the operation of the staffing agencies.
- 8 That since 1999, the Plaintiff, Lawton Limehouse, Jr, has worked and devoted his full time and efforts to building and establishing the aforesaid staffing agencies.
- 9 That heretofore, in 2004 the Defendant, Paul H. Hulsey, individually and as an

agent and servant of The Hulsey Litigation Group, LLC filed a class action lawsuit on behalf of certain individuals, against the Plaintiff L&L Services, LLC and WLL, LLC which said lawsuit alleged improper acts and conduct on part of the Plaintiff as well as L&L Services, LLC and WLL, LLC

10 On or about April 23, 2004 the Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post & Courier staff. The Post & Courier is a widely distributed newspaper in Charleston County and throughout other areas of the state of South Carolina.

11 During the news conference and or during the Defendant, Paul H. Hulsey's meeting with members of the news media including a reporter from the Post & Courier staff, the Defendant, Paul H. Hulsey, made false and defamatory statements concerning the Plaintiff with the knowledge and intent that said statements be published by the Post & Courier newspaper as well as by other media located in the Charleston County area which statements included the following to wit

- 347
- a That the Plaintiff had engaged in a classic racketeering scheme,
 - b that the Plaintiff's conduct set the community back 150 years,
 - c that the Plaintiff engaged in a blatant case of indentured servitude,
 - d that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano

12 That Tony Soprano is portrayed as a gangster on the critically acclaimed, Emmy

and Peabody winning HBO series "The Sopranos" which is a made for TV series which is aired and shown on the Home Box Office network and has been aired and shown for the past five (5) years and continues to be aired and shown on Home Box Office network.

13 That Tony Soprano in the TV series "the Sopranos" is depicted as

- a. a gangster and mobster,
- b. a murderer,
- c. a person engaged in prostitution,
- d. a person engaged in gambling,
- e. a person engaged in extortion,
- f. a person engaged in racketeering,
- g. a person who operates a strip club
- h. a person who extorts money from people through physical violence as well as other means,
- i. a person who uses obscene, vulgar, and profane language

14 The aforesaid statements were made by the Defendant, Paul H. Hulsey, concerning the Plaintiff, in his individual capacity as well as an agent, servant, employee and member of the Defendant, The Hulsey Litigation Group, LLC

15 The Hulsey Litigation Group, LLC is jointly and severally liable for the acts and omissions of the Defendant, Paul H. Hulsey, as referred to herein.

16 That the statements made by the Defendant, Paul H. Hulsey as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against

the Plaintiff and Plaintiff's companies and also with the intent to attract individuals who would become members of the class action suit so the Defendants could potentially earn large sums of money as legal fees

- 17 These statements made by the Defendant, Paul H. Hulsey, as aforesaid, were not privileged, were false and defamatory, and were intended to degrade the Plaintiff and did harm and reduce his character and reputation in the estimation of his friends, acquaintances, business associates, relatives and the public at large and caused the Plaintiff to experience great humiliation, embarrassment and intended to and did in fact disgrace the Plaintiff, and render him odious, contemptible and subject to ridicule
- 18 That at the time the Defendant, Paul H. Hulsey, made the aforesaid statements concerning the Plaintiff he knew or in the exercise of reasonable care and diligence should have known that said statements would be published in the Post & Courier as well as by other media and in fact said statements were published by the Post & Courier on April 24, 2004
- 19 That the aforesaid statements made by the Defendant have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation and further the Plaintiff has suffered special damages in that he has lost income and has lost his businesses all to his damage and detriment

FOR A FIRST CAUSE OF ACTION

(As to both Defendants Defamation, Slander and Libel)

- 20 Each and every allegation contained in paragraphs 1-19 above are incorporated

herein by express reference as though fully set forth.

- 21 That the aforesaid statements made by the Defendant, Paul H. Hulsey, had a
defamatory meaning in that the statements impeached the honesty, integrity, virtue
and reputation of the Plaintiff and exposed him to public hatred, contempt,
ridicule, caused him to be shunned or avoided, and injured his office, business and
occupation
- 22 That the statements made and published by the Defendant, Paul H. Hulsey were
made and published with actual or implied malice by the Defendant in an effort to
bolster the allegations of the class action lawsuit which he filed against the
Plaintiff and Plaintiff's companies so that he and the Defendant, The Hulsey
Litigation Group, LLC could increase their potential for earning large sums of
money from the lawsuit as legal fees
- 23 That the statements made by the Defendant, Paul H. Hulsey as aforesaid were
false
- 24 That the aforesaid defamatory statements made by the Defendant, Paul H. Hulsey
and communicated to representatives of the Post & Courier and other
representatives of the media were made by the Defendant, Paul H. Hulsey with the
expectation that said statements would be published in the media which
statements were published by representatives of the press including but not
limited to the Post & Courier
- 25 That the Defendant has engaged in libel per se and slander per se in making the
aforesaid defamatory statements concerning the Plaintiff and his businesses with

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the expectation that the aforesaid statement would be published by the news media.

26 The Plaintiff has been damaged as aforesaid by the defamatory statements made by the Defendant, Paul H. Hulsey, who intended and expected the statements to be published in the news media and more particularly the Post & Courier. The damages included the Plaintiff's embarrassment, humiliation, mental suffering caused the Plaintiff injury in his office, business and occupation and further the Plaintiff has expended large sums of money in attorney's fees defending against the defamatory statements made by the Defendants.

27 That the Plaintiff seeks, actual, general and special damages against the Defendants as well as punitive damages because the Defendants' actions were intentional or made with the reckless disregard of the Plaintiff's rights in an amount to be determined by the jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, for actual damages including general and special damages and punitive damages and the costs of this action.

CISA & DODDS, LLP



Frank M. Cisa
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
(843) 881-3700

Mt. Pleasant, SC
This 19th day of April, 2006

**EXHIBIT
B**

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Civil No 06-CP-10-1578

Lawton Linchouse, Jr.,

Plaintiff,

v

Paul H. Hulsey, and The
Hulsey Litigation Group,
LLC,

Defendants

To The Clerk of the Court
Court of Common Pleas for the State of South Carolina, Charleston County

PLEASE TAKE NOTICE, that on May 5, 2006, defendant Hulsey Litigation Group, LLC, filed a Notice of Removal of this action in the United States District Court for the District of South Carolina. A true and correct copy of the Notice of Removal is annexed hereto.

PLEASE TAKE FURTHER NOTICE that the filing of the Notice of Removal in the United States District Court and the filing of this Notice effect the removal of this action, and pursuant to 28 U.S.C. § 1446(d) the above captioned action may proceed no further unless and until the case is remanded.

Respectfully submitted this 5th day of May 2006, in Charleston, South Carolina



Paul H. Hulsey
William J. Cook, USDC SC No 7167
Abigail B. Walsh, USDC SC No 71291
HULSEY LITIGATION GROUP, LLC
Charleston Harbor

2 Wharfside 3
Charleston, SC 29401
Tel 843-723-5303
Fax 843-723-5307

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served upon counsel of record, via United States mail to the following

Frank M Cisa, Esq
CISA & DODDS, LLP
622 Johnnie Dodds Blvd
Mt Pleasant, SC 29464
(843) 881-3700


Paul H. Hulsey

May 5 2006
Charleston, SC

**EXHIBIT
C**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
Civil Action No

ORIGINAL FILED

APR 23 2004

LARRY W. PROPER, CLERK
CHARLESTON, SC

Maximino Flores, Mateo Alvarez, Mameel
Ramirez, Jose Luis Jimenez, Maximina Flores,
and Maximino Flores, and Others Similarly
Situated,

Plaintiffs

2 0 4 1 2 9 5 2 3

vs

CLASS ACTION COMPLAINT
TRIAL BY JURY DEMANDED

Lawton Linchouse, Sr, Lawton Linchouse, Jr
L&L Services LLC, WLL, LLC, unknown
John Doe individuals, and unknown businesses,
including, but not limited to, A, B, & C temporary
staffing agencies, farms, hotels, restaurants, golf
courses construction companies, landscaping
services cleaning services, municipalities, and
other undiscovered businesses owned by or
affiliated with Defendants,

Defendants

HULSEY LITIGATION GROUP LLC
Paul H. Hulsey
William J. Cook, D.S.C. Bar No. 7167
Marco T. Torres
Charleston Harbor
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Charleston, SC 29401
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ATTORNEYS FOR PLAINTIFFS

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I INTRODUCTION

- 1 This case arises out the abuse of employee rights by Defendant Lawton Limehouse, Sr , Defendant Lawton Limehouse, Jr 's, Defendants L&L Services, LLC, and WLL, LLC, and other John Doe and A, B, & C Defendants, as well as violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U S C §§ 1961 to 1968, and violations of other federal and state laws as detailed below
- 2 This Complaint is brought by the Plaintiffs on their behalf and for all others similarly situated to vindicate their rights to receive full and fair compensation for their labor The Defendants' acts and omissions include, but are not limited to an unlawful scheme to defraud, corrupt, cheat, steal, extort, and convert the money and property of the Plaintiffs who provided labor services in exchange for wages This scheme to defraud the Plaintiffs for the economic benefit of the Defendants involves, among other crimes mail fraud, wire fraud, falsification of government documents, extortion, and transportation of persons or property stolen, obtained by fraud or converted

II JURISDICTION AND VENUE

- 3 This Court has jurisdiction over this action under 18 U S C § 1964(a) and (c) (RICO) 28 U S C §§ 1331 (federal question), and 28 U S C § 1367 (commerce) Supplemental jurisdiction under 28 U S C § 1367 exists as to those claims that are so related to the federal claims in that they form part of the same case or controversy The matters in controversy arise under the Constitution, treaties and laws of the United States, including those regulating commerce

- 4 Personal jurisdiction and venue are proper in this Court under 18 U S C § 1965(a) and 28 U S C § 1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district

III PARTIES

- 5 Defendants Lawton Limehouse, Sr and Lawton Limehouse, Jr started Defendant L&L Services, LLC and Defendant WLL, LLC (the Limehouse Defendants") in September 1999 and April 2000, respectively or perhaps earlier as discovery may disclose, to provide temporary employees to Charleston, South Carolina, businesses. Other undiscovered individuals are denominated as Defendant John Doe and other undiscovered businesses are denominated as Defendant A, B & C. Their identities will be disclosed as discovery progresses.
- 6 The John Doe and A, B & C Defendants either knowingly or willfully and recklessly turned a blind eye to the impropriety and illegality of the conduct of the Limehouse Defendants, and either aided and abetted or participated in the scheme by providing continuous demand for temporary staffing.

IV RELEVANT PERIODS OF TIME

- 7 The various Enterprises pled hereinafter, were formed no later than 1999, if not earlier, and have continued in existence through the date of filing of this Complaint. The scheme to defraud, corrupt, cheat, steal, and convert property pled hereinafter, began on or before 1999, and continues to this date.

V DEFINITIONS

- 8 As used in this Complaint and as used hereinafter, 'mail,' 'mails,' 'mailed,' 'mailing' or 'letter' means placing in any post office or authorized depository for

mailed matter, any matter or thing to be delivered by the United States Postal Service or depositing or causing to be deposited any matter or thing to be delivered by any private or commercial interstate carrier, or taking or receiving therefrom, any such matter or thing, or knowingly causing to be delivered by any such means any such matter; and "wire communication" or "telephone" refers to any transmission by means of wire or radio communication in interstate commerce

VI THE SCHEME TO DEFRAUD

- 9 The Plaintiffs and Class Members in this action were hired by the Defendants through which they worked at various area businesses as temporary employees
- 10 The businesses that contract employees from Defendants' enterprise pay salaries and wages directly to the Limchouse Defendants. The businesses benefit by neither paying wages or benefits, such as health or worker's compensation insurance
- 11 The Limchouse Defendants in turn, take at least \$4.00 per hour from each of their employees' wages and then issue a paycheck to the employees
- 12 Although deductions are taken from each employee for Social Security and Medicare, the Plaintiffs and all others similarly situated are deprived of the benefit of those deductions through Defendants' scheme of reporting false Social Security and other identification numbers. Plaintiffs thus earn, but not accrue, the benefits intended by the Social Security and Medicare laws
- 13 Each week, the Defendants' managers tell the employees at which area businesses they need to report for work. The Limchouse Defendants provide vans to shuttle

the employees back and forth from the substandard company owned residences where the majority of the company employees reside, to the various work sites

- 14 The housing the Lanehouse Defendants provide is substandard and yet the workers are charged for it. Often, ten to thirty, and sometimes more, employees are crowded into the homes. Many of the homes used by Defendants to house its employees have been deemed uninhabitable by city inspectors, but Defendants still deduct rent from Employees' paychecks.
- 15 The Plaintiffs individually and on behalf of other employees similarly situated allege that Defendants developed a scheme whereby they would illegally, willfully and consistently withhold portions of its employees' wages without any justification or right under state or federal law. For example, employees would work a forty (40) hour work week and would be compensated for either thirty-five (35) or thirty-seven (37) hours without written or verbal notification of said deductions or justification for said deductions.
- 16 Plaintiffs individually and on behalf of other employees similarly situated also allege Defendants developed a scheme whereby they would illegally, willfully and consistently fail to compensate its employees at the rate of one half times the regular rate for hours worked in excess of forty (40) hours a week. For example, Plaintiffs would often work sixty (60) to seventy (70) hours a week and received no overtime pay.
- 17 Moreover, in order to circumvent the federal overtime requirements, Defendants would divide the hours employees worked between its two companies so that an employee who worked over forty hours would receive two checks, one issued by

L&L Services and another from WLL, LLC. The employee was thereby denied the federally mandated time and half compensation for his/her hours worked over forty in a week.

- 18 Although the Lanehouse Defendants set up two companies, they were for all intents and purposes one and the same.
- 19 In addition to dividing the hours employees worked between its two companies to circumvent federal overtime wage requirements, Defendants would also routinely issue pay checks to employees that reflected over forty hours a week but were compensated at the same pay rate for all of the hours with no explanation as to why they were denied overtime pay.

VII OTHER FACTS COMMON TO ALL CLAIMS

- 20 Plaintiff Maximino Flores ("Flores") worked for the Defendants from approximately February 2002 through February 2004.
- 21 Through Defendants' employment agencies, Flores worked at various businesses and companies including several Charleston restaurants, landscaping companies, and collecting trash for the area municipalities.
- 22 Flores regularly worked over forty hours a week in landscaping jobs during the day and at various restaurants in the evening. Both jobs were coordinated by and paid through Defendants' companies.
- 23 In addition, Defendants, by and through their agents, advised Flores that if he worked two shifts in one day he would need to use a different name at the second job.

- 24 Defendants then provided Flores with a resident alien card and Social Security card bearing the name of Oscar Mejias. Plaintiff Flores asserts that Defendants' identification and Social Security card scheme was used as a means to regularly deny him overtime wages.
- 25 Defendants also routinely withheld hours that Flores worked during the week from his paycheck. Flores informed Defendants of the missing hours on several occasions and was credited for some of these. However, at the time Flores' termination from Defendants' companies, he was owed approximately twelve hours of wages he has never received.
- 26 Plaintiff Mateo Alvarez (Alvarez") worked for the Defendants from approximately August 2003 through March 2004.
- 27 Alvarez worked through Defendants' companies for Trident Construction in Charleston County and at local restaurants. Like Flores, Alvarez worked two jobs a day through Defendants' staffing agencies. Alvarez worked eight hour days for Trident Construction, accumulating forty (40) hours a week there. Alvarez would then work up to an additional eight hours at local restaurants the same night. Alvarez was issued two separate pay checks by Defendants, one for the construction job and one for the restaurant work. As a result, Alvarez was routinely, willfully and illegally denied overtime wages.
- 28 Additionally, Alvarez alleges that Defendants' routinely withheld hours he worked from his paychecks. For example, in October 2003, Defendants' did not compensate Alvarez for twenty hours of work he performed while working for a local construction company and a local restaurant.

- 29 On other occasions, when Alvarez's paycheck did not reflect the complete hours he had worked, the Defendants' would reimburse him several weeks later, but only after he complained to the Defendants. The Defendants' regularly withheld from Alvarez one or several hours he worked a pay period and since his departure from Defendants' employment, Alvarez has yet to be reimbursed for approximately forty hours owed to him for work performed.
- 30 Plaintiff Manuel Ramirez ("Ramirez") worked for the Defendants from approximately November 2002 through February 2004. Through Defendants' temporary staffing agency, Ramirez worked for various construction companies and for Waste Industries, Inc. collecting trash.
- 31 Ramirez regularly worked ten to twelve hour days, five days a week, and was routinely willfully and illegally denied overtime compensation. In addition, on at least one occasion, Ramirez was not compensated for the full amount of hours he at local businesses through the Defendants' agencies.
- 32 Plaintiff José Louis Jimenez ("Jimenez") worked for the Defendants from approximately November 2003 through March 2004. Through Defendants' temporary staffing agency, Jimenez worked for various landscaping and construction companies, as well as for various local restaurants.
- 33 Jimenez alleges that Defendants' routinely withheld hours he worked during the week from his paycheck without justification or cause. For example, during the week of December 11, 2003, Defendants willfully failed to pay Jimenez for approximately fourteen hours he worked in landscaping and at a local restaurant. In total, Jimenez believes he was willfully and illegally not paid for a total of

twenty-one hours he worked at various companies through Defendants' temporary staffing agency

34 Maximina Flores ("Maximina") worked for the Defendants from approximately September 2003 to February 2004

35 Through Defendants' temporary staffing agencies, Maximina worked in housekeeping and at local restaurants

36 Maximina alleges that at least on one occasion she was willfully and illegally denied overtime compensation during a week she worked fifty-six hours. In addition, Defendants willfully failed to compensate Maximina for at least twenty-two hours she worked at two local restaurants

37 Macrino Flores ("Macrino") worked for the Defendants from approximately August 2003 to February 2004

38 Through Defendants' temporary staffing agencies, Macrino worked for various landscaping and construction companies and restaurants. Macrino regularly worked over forty hours a week in landscaping jobs during the day and at various restaurants in the evening all of which were coordinated by and paid through Defendants' companies. Macrino was issued a separate check for the construction work and a separate check for the restaurant work

39 As a result, Macrino was routinely willfully and illegally denied overtime wages. In addition, Defendants willfully failed to compensate Macrino for at least twenty hours he worked for various construction companies and restaurants. For example, Macrino was not compensated for eight hours he worked at a local

restaurant in January 2004, even though he notified Defendants of the missing hours

- 40 On information and belief, the Defendants treated all as yet unidentified individuals in a similar fashion

VIII. CLASS ACTION ALLEGATIONS

- 41 The Representative Plaintiffs bring this action individually and on behalf of the Class pursuant to Rule 23 FRCP
- 42 The proposed class does not include directors, officers, or employees of the Defendant companies
- 43 Class Members include all persons who worked for the Defendants and their companies who did not receive their hourly wages and/or overtime wages in accordance with federal and state law
- 44 Upon information and belief, the class period begins at least five years prior to the date of the filing of the Complaint in this action
- 45 Class members are numerous Joinder is impracticable Plaintiff believes there are hundreds if not thousands of Class Members Their exact number and identities are known by Defendants
- 46 Plaintiffs' claims and any defenses thereto are typical of the Class Members arise from the same course of conduct, and involve questions of fact and law common to the Class
- 47 Any claims or defenses of Defendants are common to all Class Members, including Plaintiffs, and are typical of the claims and defenses they will raise against the Class

- 48 Plaintiffs and the Class Members were damaged in the same way by the same wrongful conduct of the Defendants
- 49 Representative questions of law and fact common to the Class Members include, but are not limited to whether Defendants illegally manufactured government documentation to allow them to perpetuate their illegal practices, including their failure to pay wages and overtime to Plaintiffs and their Class Members, whether Defendants failed to pay wages, whether Defendants failed to pay overtime, and other violations of state and federal law articulated herein, and other yet undiscovered violations of state and federal law
- 50 Plaintiff will fairly and adequately protect and represent the interests of the Class
- 51 The interests of the Plaintiffs are coincidental with and not antagonistic to those of the Class Members
- 52 Neither Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action
- 53 Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex litigation, including class action litigation. Lead counsel Paul H. Hulsey is experienced in complex racketeering and class litigation, including several trials to verdict
- 54 Counsel has the ability to advance the costs and expenses of the litigation
- 55 To the extent the relief sought is not declaratory or injunctive, the amount in controversy exceeds one hundred dollars for each member of the Class
- 56 The maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice

because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class who would confront the party opposing the Class with incompatible standards of conduct, and adjudications with respect to individual Class Members would as a practical matter be dispositive of the interests of adjudication or would substantially impair or impede their ability to protect their interests, final equitable and declaratory relief is appropriate with respect to the class the action is manageable as a class, individual claims of the separate class members might and could be prejudiced by the expense of multiple separate litigations, and it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify class treatment

IX FACTS RELEVANT TO THE § 1964 CLAIMS

1 The Temporary Staffing Enterprise

57 At all relevant times at least one 'enterprise' existed within the meaning of 18

U.S.C. § 1961(4) This "enterprise" is an entity that engaged in activities affecting interstate commerce

58 The Enterprise was an association-in fact enterprise which is referred to herein as the "Temporary Staffing Enterprise." The Individual Defendants participated in the operation and management of this enterprise and conduct its affairs through their pattern of unlawful activity, including execution of their Scheme to Defraud, corrupt, cheat, steal, and convert the money and property of the Plaintiffs

a Purpose of the Enterprise

- 59 At all relevant times, the purposes of the Temporary Staffing Enterprise were to
- (1) provide for the temporary staffing needs of local organizations and businesses, including those of Charleston County and (2) to make profits by engaging in activities in connection with the provision of temporary workers to area businesses
- 60 At all relevant times, the legitimate purpose of the Temporary Staffing Enterprise was to match temporary workers with area businesses for employment. Some members of the enterprise were owners and provided management in connection with the enterprise. Other members of the enterprise served supporting roles and participated in the business of the enterprise.
- 61 At all relevant times the Defendants utilized the Temporary Staffing Enterprise to further their illegitimate purpose to retain monies earned as wages by the Plaintiffs and other former temporary workers to increase their own profits and those of the enterprise and to manipulate reporting requirements to governmental labor and taxing authorities in order to deprive, corrupt, cheat, steal, and convert the money and property of the Plaintiffs.
- 62 The Plaintiffs were the intended victims of this Scheme, and were deprived and cheated out their wages and overtime earned through their employment by the Temporary Staffing Enterprise.

b Membership in the Temporary Staffing Enterprise

- 63 The membership, both writing and unwriting in the Temporary Staffing Enterprise was and is as follows: (1) the Defendants Lawton Lunchhouse, Sr. and

Lawton Limehouse, Jr (2) the Defendants L&L Services, LLC and WLL, LLC, and their affiliates, (3) the various yet unnamed Defendant "John Doe" individuals, and (4) the various yet unnamed Defendant A, B & C businesses, including, but not limited to temporary staffing agencies, farms, hotels, restaurants, golf courses construction companies landscaping services, cleaning services and municipalities (5) Elvira Luebke, a supervisor employed by Defendants Limehouse and their Defendant companies, who assisted and facilitated the Defendant's Scheme to Defraud, including but not limited to threatening, extorting, and coercing Plaintiffs in order to further the purposes of the Enterprise, (6) Carlton Elliott, a staffer employed by Defendants Limehouse and their Defendant companies, who assisted and facilitated the Defendants' Scheme to Defraud, including, but not limited to, their falsification of government documents (7) other unnamed individuals partnerships, corporations, and associations, including yet unnamed resident nationals of Mexico and Argentina, (8) the Plaintiffs, who provided host labor services incidental to Defendants Scheme to Defraud, and who were the Scheme's intended and unknowing victims

c Structure of the Enterprise

64 At all relevant times, the Temporary Staffing Scheme was an ongoing association-in fact enterprise composed of entities and individuals with a common and shared purpose, a continuity of structure and personnel and a consensual decision-making structure that was used to both encourage and effect its legitimate

purposes and to carry out the Scheme to defraud, corrupt, cheat, steal, and convert the money and property of Plaintiffs

65 The roles that were performed by the various members of the Temporary Staffing Enterprise are described as follows (A) The members of the Temporary Staffing Enterprise, with the exception of Plaintiffs, who formulated a broad plan to exploit the temporary labor market by attracting and/or providing a continuous supply of temporary labor. The plan included the employment of temporary laborers, typically aliens from Latin American countries, who were then effectively held in indentured servitude by a scheme of forced housing, transportation, threats of retaliation, and coercion, (B) Defendants who concealed from labor, insurance, and taxing authorities the full nature and existence of their Employment scheme and indeed the existence of the Plaintiffs in this country state, and country by falsifying government documents and reports, including Social Security numbers, visas, and reports submitted to regulatory authorities, (C) Defendants who concealed the true value of the wages earned by Plaintiffs by dividing wages earned between the Defendants' companies such that the full amount of wages and/or overtime earned were never disclosed or paid to the Plaintiffs (D) Defendants and other members of the Enterprise who used and relied on the complexity of immigration regulations and law along with the bureaucracy of government regulatory schemes, such as taxation, Social Security and workers' compensation, to prey upon the Plaintiffs in the Scheme to Defraud. Because of the methods used, Defendants' Scheme to Defraud is intentionally designed to be almost impossible for the relevant governmental authorities to

uncover, (E) Defendants who lured and trafficked into South Carolina workers by the promise of legal and gainful employment, (F) as part of their pattern of racketeering activity, Defendants and members of the enterprise who provided false Social Security numbers and/or documentation, and/or immigration visas to their workers so that they could then work as temporary laborers at various area businesses, (G) Defendants who transported Plaintiffs and Class Members as part of the Scheme to Defraud Workers, including Plaintiffs were transported by Defendants to prevent frolic and diversion on highways inter- and intrastate in vehicles licenses and registered in North Carolina, (H) in furtherance of this pattern, Defendants who used extortion and threats of retaliation by government authorities to keep Plaintiffs as virtual slaves To this end, Defendants corralled and housed Plaintiffs in substandard housing, thus controlling how and where they lived

66 Through this circular pattern of subterfuge described above, Defendants were able to unlawfully divert from Plaintiffs their lawful wages and/or overtime and credit for Social Security and Medicare

67 Upon information and belief, Defendants (1) divert these monies for their own personal use, (2) launder money in North Carolina, Argentina, and other Latin American countries, and (3) reinvest these monies in the maintenance of the Enterprise so that the Plaintiffs are injured in a perpetual cycle

68 The Defendants involvement in these illegal activities in furtherance of their Scheme was through their participation in the management and operation of the Temporary Staffing Enterprise

69 Defendants played a central role in the management and operation of the Temporary Staffing Enterprise, especially in its illegitimate endeavors

70 The Defendants managed and organized the enterprise, dictating its structure, decisional process, and organization

d Distinction Between the Temporary Staffing Enterprise and Pattern of Unlawful Activity

71 As described herein, the Temporary Staffing Enterprise was separate and apart from the pattern of unlawful activity because the enterprise engaged in both legitimate and illegitimate activity. The members of the Temporary Staffing Enterprise included innocent parties, including the Plaintiffs, unaware of the Defendants' Scheme or the use of the enterprise in its execution

e Continuity of the Temporary Staffing Enterprise

72 The Temporary Staffing Enterprise was created at least as early as 1999 possibly earlier, upon the formation of Defendants L&L Services LLC and WLL LLC by Defendant Lawton Lamehouse, Sr., and Defendant Lawton Lamehouse, Jr. It continues today and may continue into the future. It has continuity of structure and personnel in that many of its original members including the individual Defendants continue to be active in its management and control

f Culpability of Members of the Enterprise

73 Some of the members of the Temporary Staffing Enterprise, including each of the Defendants, acted with culpability in their conduct of its affairs. Other members of the Temporary Staffing Enterprise were the unwitting instruments or victims of the culpable members of the Temporary Staffing Enterprise

2 Unlawful Activity

74 Defendants engaged in a pattern of unlawful activity consisting of predicate acts of mail fraud in violation of 18 U S C § 1341, wire fraud in violation of 18 U S C §§ 2 and 1343, transportation of persons or monies and property stolen, or converted in violation of 18 U S C § 2 and 2314, extortion in violation of 18 U S C § 1961(1), and violations of 18 U S C § 1962(a) (d)

a Mail and Wire Fraud

75 At the times relevant to this Complaint, as previously alleged herein, Defendants devised intended to devise and carried out a Scheme to Defraud, and to deprive, corrupt, cheat, steal, deprive, and convert the money and property of the Plaintiffs, including their wages and/or overtime The Scheme to Defraud involved calculated efforts to interfere with monies owed to the U S government and the use of material misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive the Plaintiffs, as well as taxing insurance, and labor authorities The scheme to corrupt involved depriving the Plaintiffs of their entitlement to overtime and/or credits paid into federal and state insurance and benefit plans The scheme to cheat was inconsistent with moral uprightness, fundamental honesty, and fair play and right dealing in the general business life of members of society In executing or attempting to execute these schemes and to receive the financial benefits of the Scheme to Defraud, Defendants repeatedly used the United States mails and interstate wire communications, as described above

76 From at least 1999 or earlier, the Plaintiffs were paid less than the hours they earned by way of wages and/or overtime. Payments were facilitated through use of the mails and wire communications. Every report transmitted by Defendants and members of the Enterprise that used the mails and wires constituted separate executions of the Scheme to Defraud. Each report and payment accomplished the dual purposes of, first, making possible the retention of the fruits of the illegal Scheme by the Defendants, and second, concealing from the Plaintiffs the true value of their services rendered and credits earned in federal and state insurance and taxing programs.

b Transportation of Stolen Property or Monies

77 As alleged herein, the Defendants throughout the course of the Scheme failed to pay Plaintiffs their fair value of their labor services rendered used by the Defendants in furtherance of the Temporary Staffing Enterprise. The Defendants created the supply and demand for the labor services of the Plaintiffs and used these services for activities in the marketplace to the Defendants' financial benefit. The Defendants stole and converted for their own use the difference in the true value of the Plaintiffs' labor services actually rendered and the amounts Plaintiffs were actually paid.

78 On numerous occasions, the Defendants transported and caused to be transported property or money belonging to Plaintiffs, knowing that it had been converted to the Defendants' own use and benefit with a value in excess of \$5,000.

79 On numerous occasions, the Defendants transported and caused to be transported persons or induced a person to travel, in interstate commerce in the execution and

concealment of the Scheme to deprive, corrupt, cheat, steal and convert the Plaintiffs' money and other property

c. Extortion

80 In furtherance of the pattern and Scheme to Defraud, Defendants used extortion and threats of violence or retaliation by government authorities to ensure that Plaintiffs are compelled to remain a part of their subterfuge. This control extends to transporting Plaintiffs to prevent their free movement and housing Plaintiffs in substandard lodgings in locations that require transportation by the Defendants to and from work in a continuous cycle.

d. Money Laundering

81 Upon information and belief, Defendants, through their Enterprise, take monies gained by their Scheme to Defraud out-of-state and to Argentina and other Latin American countries where they divert and launder it.

e. Pattern

82 The foregoing predicate acts constitute a pattern of unlawful activity. Defendants' conduct constitutes a pattern in that there is both relationship and continuity of the predicate acts. The acts are related in that they are connected to one another as part of a scheme to accomplish a uniform purpose. Their continuity is established by both the repeated nature of the conduct during the period of the Scheme and the threat of similar conduct occurring in the future. This threat is established by the continuing and ongoing nature of the conduct.

f. Relatedness

- 83 In addition, within the Scheme to Defraud, as shown herein, the predicate acts are related in the sense that they have the same purpose or goal (to retain wages and overtime pay of workers for the economic benefit of the Defendants and members of the enterprise) results (retention of wages and overtime pay), participants (the Defendants and other members of the Enterprise), victims (the Plaintiffs and other members of the Class), and methods of commission (the Scheme to Defraud and predicate acts described in the Complaint)
- 84 The predicate racketeering acts are otherwise interrelated by their distinguishing characteristics and are not isolated events, since they were carried out for the same purposes in a continuous manner throughout a substantial period of time
- 85 The continuity and relatedness of these racketeering activities constitute a pattern of racketeering activities within the meaning of 18 U S C § 1961(5)

3 Summary of the § 1964 Allegations

- 86 In connection with the activities giving rise to these claims, the Defendants at all relevant times acted with malice, intent and knowledge and in reckless disregard of the rights of the Plaintiffs
- 87 At all relevant times, the enterprises as defined herein were engaged in interstate commerce in various states
- 88 As set forth hereinabove, the Defendants at all relevant times in connection with the activities giving rise to these claims, conspired with each other and with others unknown to engage in the various activities set forth herein and aided and abetted one another in these activities all in violation of the statutes set forth herein, and

specifically 18 U S C § 2 and conspired to do so in violation of 18 U S C § 1962(d)

89 In addition to these unknown, known individuals not named as Defendants, including Elvira Luebke Carlton Elliott, and others, conspired with the Defendants as alleged herein

90 Each of the Defendants agreed to the operation of the conspiracies to deprive, corrupt, cheat, steal, and convert the property and money of the Plaintiffs

91 As set forth hereinabove, at all relevant times, and in furtherance of and for the purpose of executing the Scheme to Defraud and schemes to deprive, corrupt, cheat, steal, and convert the money or property of the Plaintiffs, the Defendants on numerous occasions used the mails and wire communications in connection with and in furtherance of the Scheme constitutes the offense of mail fraud in violation of 18 U S C §§ 2 and 1341 and the offense of wire fraud in violation of 18 U S C §§ 2 and 1343

92 As set forth hereinabove, at all relevant times the Defendants on numerous occasions transported and caused to be transported persons or property or money in excess of \$5 000 knowing the same to have been stolen and converted or obtained by fraud or misrepresentation, and each such transportation constitutes the offense of transportation of persons or stolen or converted monies, all in violation of 18 U S C §§ 2 and 2314

93 As set forth hereinabove, at all relevant times, the Defendants corruptly persuaded and caused individuals including Elvira Luebke (to coerce or threaten the

Plaintiffs) and Carlton Elliott (to produce false and misleading documents) in violation of various federal and state statutes

X CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of § 1962(a))

- 94 The Plaintiffs re-allege the preceding paragraphs
- 95 Each Defendant is a person under 18 U S C §§ 1961(1) and 1962(c)
- 96 The Temporary Staffing Enterprise is an "enterprise within the meaning of 18 U S C §§ 1961(4) and 1962(c), which enterprise was engaged in activities affecting interstate commerce at all times relevant to this Complaint
- 97 Each Defendant has received income resulting from a pattern of racketeering activity in which such Defendant has participated as a principal to use or invest any part of such income, or the proceeds from this income, in the acquisition in, or the establishment and operation of, an enterprise which is engaged in, or whose activities affect, interstate or foreign commerce
- 98 Each Defendant was associated with the enterprise within the meaning of 18 U S C § 1962(d) and conspired to violate 18 U S C § 1962(a), that is, the Defendants conspired to conduct or participate, directly, or indirectly, in the conduct of the affairs of that enterprise in relationship to the Plaintiff through a pattern of unlawful activity within the meaning of 18 U S C §§ 1961(1)(B), 1961(5), and 1962(c), to wit multiple, repeated, and continuous instances of mail fraud in violation of 18 U S C §§ 2 and 1341, multiple, repeated, and continuous instances of wire fraud in violation of 18 U S C §§ 2 and 1343 multiple,

repeated, and continuous instances of interstate transportation of persons, or property or money stolen, obtained by fraud or converted in violation of 18 U S C §§ 2 and 2314, multiple, repeated, and continuous instances of extortion by threats of coercion in violation of the Hobbs Act, 18 U S C § 1951 in interference with commerce of labor and services, and South Carolina Code § 16-17-640 (blackmail and other offenses against public policy), and upon information and relief, money laundering in violation of 18 U S C § 1956

99 The Plaintiffs were injured within the meaning of 18 U S C § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U S C § 1961(1)(B) that were overt acts in violation of 18 U S C § 1962(d) committed by the Defendants

SECOND CLAIM FOR RELIEF

(Conspiracy in Violation of § 1962(d) to Violate § 1962(a))

- 100 The Plaintiffs re-allege the preceding paragraphs, including the allegations set forth in the First Claim for Relief
- 101 Each Defendant is a person under 18 U S C §§ 1961(1) and 1962(c)
- 102 The Temporary Staffing Enterprise is an enterprise within the meaning of 18 U S C §§ 1961(4) and 1962(c), which enterprise was engaged in activities affecting interstate commerce at all times relevant to this Complaint
- 103 Defendants conspired to receive income in violation of 18 U S C § 1962(a)
- 104 Each of the Defendants conspired within the meaning of 18 U S C § 1962(d) to violate 18 U S C § 1962(a), that is, the Defendants conspired to receive income and/or reinvest this income from a pattern of racketeering activity through

participation in an enterprise related to the Plaintiffs that affected interstate or foreign commerce within the meaning of 18 U S C §§ 1961(1)(B), 1961(5) and 1962(c), to wit multiple, repeated, and continuous instances of mail fraud in violation of 18 U S C §§ 2 and 1341, multiple, repeated, and continuous instances of wire fraud in violation of 18 U S C §§ 2 and 1343, multiple, repeated, and continuous instances of interstate transportation of persons, or property or money stolen, obtained by fraud or converted in violation of 18 U S C §§ 2 and 2314, multiple, repeated, and continuous instances of extortion by threats of coercion in violation of the Hobbs Act, 18 U S C § 1951 in interference with commerce of labor and services, and South Carolina Code § 16-17-640 (blackmail and other offenses against public policy), and upon information and relief, money laundering in violation of 18 U S C § 1956

105 The Plaintiffs were injured within the meaning of 18 U S C § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U S C § 1961(1)(B) that were overt acts in violation of 18 U S C § 1962(d) committed by the Defendants

THIRD CLAIM FOR RELIEF

(Violation of § 1962(c))

106 The Plaintiffs reallege the preceding paragraphs

107 Each Defendant is a person under 18 U S C §§ 1961(1) and 1962(c)

108 The Temporary Staffing Enterprise is an "enterprise" within the meaning of 18 U S C §§ 1961(4) and 1962(c) which enterprise was engaged in activities affecting interstate commerce at all times relevant to this Complaint.

- 109 Each of the Defendants was associated with the enterprise and acquired or maintained an interest, through a pattern of racketeering, in the enterprise whose activities affected interstate or foreign commerce, which harmed Plaintiffs through a pattern of unlawful activity within the meaning of 18 U S C 1961(1)(B), 1961(5), and 1962(c), to wit multiple, repeated and continuous instances of mail fraud in violation of 18 U S C 2 and 1341, multiple, repeated, and continuous instances of wire fraud in violation of 18 U S C §§ 2 and 1343, multiple, repeated, and continuous instances of interstate transportation of persons, or property or money stolen, obtained by fraud or converted in violation of 18 U S C §§ 2 and 2314, multiple, repeated, and continuous instances of extortion by threats of coercion in violation of the Hobbs Act, 18 U S C § 1951 in interference with commerce of labor and services and South Carolina Code § 16-17 640 (blackmail and other offenses against public policy), and upon information and relief, money laundering in violation of 18 U S C § 1956
- 110 The Plaintiffs were injured within the meaning of 18 U S C § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U S C § 1961(1)(B) that were overt acts in violation of 18 U S C § 1962(d) committed by the Defendants

FOURTH CLAIM FOR RELIEF

(Conspiracy in Violation of § 1962(d) to Violate § 1962(c))

- 111 The Plaintiffs re-allege the preceding paragraphs, including the allegations set forth in the Third Claim for Relief
- 112 Each Defendant is a person under 18 U S C §§ 1961(1) and 1962(c)

113 The Temporary Staffing Enterprise is an "enterprise" within the meaning of 18

U.S.C. §§ 1961(4) and 1962(c) which enterprise was engaged in activities affecting interstate commerce at all times relevant to this Complaint

114 Defendants conspired to receive income in violation of 18 U.S.C. § 1962(a)

115 Each of the Defendants was associated with the enterprise and conspired within the meaning of 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c), that is, the Defendants conspired to conduct or participate, directly, or indirectly, in the conduct of the affairs of that enterprise in relationship to the Plaintiff through a pattern of unlawful activity within the meaning of 18 U.S.C. §§ 1961(1)(B) 1961(5), and 1962(c), to wit multiple, repeated, and continuous instances of mail fraud in violation of 18 U.S.C. §§ 2 and 1341, multiple, repeated, and continuous instances of wire fraud in violation of 18 U.S.C. §§ 2 and 1343 multiple, repeated, and continuous instances of interstate transportation of persons, or property or money stolen, obtained by fraud or converted in violation of 18 U.S.C. §§ 2 and 2314, multiple, repeated, and continuous instances of extortion by threats of coercion in violation of the Hobbs Act, 18 U.S.C. § 1951 in interference with commerce of labor and services, and South Carolina Code § 16-17-640 (blackmail and other offenses against public policy), and upon information and belief, money laundering in violation of 18 U.S.C. § 1956

116 The Plaintiffs were injured within the meaning of 18 U.S.C. § 1964(c) by reason of the commission of the unlawful activities within the meaning of 18 U.S.C. § 1961(1)(B) that were overt acts in violation of 18 U.S.C. § 1962(d) committed by the Defendants

FIFTH CLAIM FOR RELIEF

(Violations of the Fair Labor Standards Act)

- 117 The Plaintiffs re-allege each of the preceding allegations
- 118 The Fair Labor Standards Act (FLSA), 29 U.S.C. § 207 et seq. provides a cause of action to recover overtime wages not paid
- 119 Defendants' bad faith conduct as described herein entitles Plaintiffs to an additional equal amount of lost wages in liquidated damages, attorney's fees, and costs
- 120 Plaintiffs satisfy standing requirements insofar as they have handled or otherwise worked on goods or materials that have been moved in interstate commerce and whose gross sales volume exceeds \$500,000

SIXTH CLAIM FOR RELIEF

(Violations of the Payment of Wages Act)

- 121 The Plaintiffs re-allege each of the preceding allegations
- 122 The Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to -110 provides that an employer shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions
- 123 As detailed herein, Defendants have unlawfully withheld wages without legal justification

124 As a result of Defendants' statutory violations Plaintiffs and Class Members are
entitled to treble damages in the amount of three times the full amount of the
unpaid wages plus costs and reasonable attorney's fees

SEVENTH CLAIM FOR RELIEF

(Breach of Contract)

125 The Plaintiffs re-allege each of the preceding allegations

126 The Defendants and their agents by their acts and omissions, described herein
breached their contractual obligations, which were owed to the Plaintiffs and
Class Members, including but not limited to failing to pay Plaintiffs and Class
Members their wages and/or overtime earned in exchange for services provided

127 Plaintiffs and Class Members have been damaged by Defendants breach of
contract, and Defendant, and its agents, have illegally profited from this breach

128 Plaintiffs and Class Members are entitled to actual damages as a result of this
breach

EIGHTH CLAIM FOR RELIEF

(Unjust Enrichment, Restitution, and Disgorgement of Illegal Profits)

129 The Plaintiffs re-allege each of the preceding allegations

130 The Defendants, and their agents, have been unjustly enriched by reaping the
benefits of their deception by failing to pay wages and/or overtime earned

131 Based upon the practices alleged heretofore, the Defendants intended to and
did fail to account for and pay wages and/or overtime to Plaintiffs and Class
Members in exchange for services they provided

- 132 The Defendants intended to retain, and did retain, monies not paid to Plaintiffs and Class Members for work they provided to the detriment of the Plaintiffs and Class Members
- 133 The Defendants manipulated their internal wage accounting process for its benefit and to the detriment of the Plaintiffs and Class Members
- 134 The Defendants have therefore been unjustly enriched. The Plaintiffs and Class Members are entitled to appropriate equitable relief to recover the amounts by which the Defendants have been unjustly enriched as a result of said conduct together with pre-judgment interest, along with disgorgement of all profits and all gotten gains thus obtained

NINTH CLAIM FOR RELIEF

(Civil Conspiracy)

- 135 The Plaintiffs re-allege each of the preceding allegations
- 136 Defendants, in concert with their agents in South Carolina, did purposely harm and injure the Plaintiffs and Class Members
- 137 Individual and Corporate Defendants acted together as agents for the other individually and in concert to the detriment of Plaintiffs and Class Members
- 138 Defendants and their agents with full knowledge of the prohibitions against their practices in the State of South Carolina, and despite that knowledge, continued their illegal practices to the detriment of the Plaintiffs and Class Members
- 139 Defendants, and their agents in South Carolina, sought to damage Plaintiffs and the Class Members by failing to pay money for work that was performed on Defendants' behalf

140 That Defendants, and their agents in South Carolina, caused the Plaintiffs and Class Members special damages as a result of their civil conspiracy for failing to pay for services performed on Defendants' behalf

141 That Plaintiffs and Class Members have suffered damages as a result of the civil conspiracy of Defendants and their agents, and are entitled to receive actual and punitive damages together with costs

TENTH CLAIM FOR RELIEF

(Accounting)

142 Plaintiffs re-allege each of the preceding allegations

143 Plaintiffs request this Court require the Defendants to provide an accounting for all sums they illegally and improperly retained from the Plaintiffs and Class Members out of the practices alleged herein, and to determine all wages and benefits the Plaintiffs would have been entitled to receive had the Defendants' conduct been lawful, and to determine which Defendants, named or unnamed, may be responsible

XI DEMAND FOR JURY TRIAL

144 Plaintiffs demand a trial by jury on behalf of themselves and the Class Members

XII. PRAYER FOR RELIEF

WHEREFORE the Plaintiff on behalf of themselves and the Class Member, pray for judgment, jointly and severally, against the Defendants, as follows:

- a. Awarding the Plaintiffs and Class Members actual damages, punitive damages and pre-judgment interest as a result of the wrongful conduct complained of herein,
- b. Awarding injunctive relief prohibiting Defendant from continuing to engage in the illegal practices described herein
- c. Awarding the Plaintiff and Class Members their costs and expenses in this litigation including reasonable attorneys' fees and expert fees,
- d. Requiring the Defendants to provide an accounting to the Plaintiffs and to disgorge all profits illegally obtained and for which they were unjustly enriched and to provide a mechanism for identifying and notifying all Class Members similarly situated and a mechanism for the fair and equitable distribution of damages to the Class,
- e. Awarding the Plaintiff and Class Members such other and further relief as may be just and proper.


HULSEY LITIGATION GROUP, LLC
Paul H. Hulsey
William J. Cook, D.S.C. Bar No. 7167
Marco T. Torres
Charleston Harbor
2 Wharfside 3
Charleston, SC 29401
(843) 723 5303 (tel)
(843) 723 5307 (fax)

ATTORNEYS FOR THE PLAINTIFFS

CIVIL COVER SHEET

This JS 44 (rev) cover sheet and the information contained here, in neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Lawton Limehouse, Jr

(b) County of Residence of First Listed Plaintiff Charleston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address and Telephone Number)

Frank M. Cisa, 622 Johnnie Dodds Blvd,
Mt Pleasant, SC 29464

DEFENDANTS

Paul H. Hulsey & The Hulsey Litigation
Group, Inc.County of Residence of First Listed Defendant Charleston
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

Paul H. Hulsey, William J. Cook, Agent B
Walsh

II BASIS OF JURISDICTION (Place an X in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government is Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III CITIZENSHIP OF PRINCIPAL PARTIES (Place an X in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF Incorporated Principal Place of Business in This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated Principal Place of Business in Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Name ☐ 6 PTF ☐ 6 DEF

IV NATURE OF SUIT (Place an X in One Box Only)

CONTRACT	TORTS	PROPERTY/REALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110.1 Surety ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defuncted Sundry Liens (Excl. Veterans) ☐ 153 Recovery of Compensation of Veterans Benefits ☐ 160 Stockholders Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Products Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees Liability ☐ 340 Marine ☐ 345 Marine Products Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Products Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury Med. Malpractice ☐ 365 Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Products Liability	☐ 610 Aggravation ☐ 620 O.D. Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Law ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 680 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor Mgmt. Relations ☐ 730 Labor Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Legislation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyright ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DTWC/DVWW (405(g)) ☐ 864 SSD Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable Sat. TV ☐ 810 Selective Service ☐ 950 Securities/Commodities/Exchange ☐ 875 Consumer Challenging 1 USC 3410 ☐ 190 Other Statutory Actions ☐ 191 Agric. Fraud Acts ☐ 892 Economic Stabilization Act ☐ 893 Emergency National Motors ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fed. Determination Under Equal Access to Justice Act ☐ 950 Constitutional or State Statutes
REAL PROPERTY ☐ 210 Land Co. Acquisition ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts Land ☐ 245 Tort Products Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities Employment ☐ 446 Amer. w/Disabilities Other ☐ 448 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 520 Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Conditions			

V ORIGIN

- ☐ 1 Original Proceedings ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Remanded ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)
18 USC § 1964(a) & (c) (RICO), 28 USC § 1367 (Commerce)

Brief description of cause:
Scheme to defraud workers of lawful wages, inter alia

VII REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ ☐ CHECK YES only if demanded in complaint ☒ JURY DEMAND ☐ Yes ☐ No

VIII RELATED CASE(S) IF ANY

(See instructions)

JUDGE HouchDOCKET NUMBER 2 04 1295 12

DATE

May 3, 2006

SIGNATURE OF ATTORNEY OF RECORD

William J. Cook

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Civil No 06-CP 10-1578

Lawton Limehouse, Jr

Plaintiff

v

Paul H Hulsey and The
Hulsey Litigation Group,
LLC

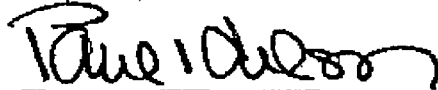
Defendants

To The Clerk of the Court
Court of Common Pleas for the State of South Carolina, Charleston County

PLEASE TAKE NOTICE, that on May 5, 2006, defendant Hulsey Litigation Group LLC, filed a Notice of Removal of this action in the United States District Court for the District of South Carolina. A true and correct copy of the Notice of Removal is annexed hereto.

PLEASE TAKE FURTHER NOTICE that the filing of the Notice of Removal in the United States District Court and the filing of this Notice effect the removal of this action, and pursuant to 28 U S C § 1446(d), the above captioned action may proceed no further unless and until the case is remanded.

Respectfully submitted this 5th day of May 2006, in Charleston, South Carolina



Paul H Hulsey
William J Cook, USDC SC No 7167
Abigail B Walsh USDC SC No 71291
HULSEY LITIGATION GROUP LLC
Charleston Harbor

2 Wharfside 3
Charleston SC 29401
Tel 843 723 5303
Fax 843 723 5307

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lawton Limehouse Jr	)	Civil Action No <u>2 06 cv-013879-CWH</u>
	)	
Plaintiff	)	
	)	
vs	)	
	)	
Paul H Hulsey, and The Hulsey	)	PLAINTIFF'S MOTION TO REMAND
Litigation Group, LLC,	)	TO STATE COURT
Defendants	)	
	)	

The Plaintiff, Lawton Limehouse, Jr, hereby moves pursuant to 28 U S C § 1447 (c) for the remand of the above case to state court. The basis for Plaintiff's motion is that the Plaintiff's Complaint alleges a cause of action for common law defamation which does not arise under federal law or involve a substantial question of federal law. In support of this motion, the Plaintiff also submits his memorandum in support of Plaintiff's motion for remand with accompanying exhibits all of which are filed herewith.

BY s/Frank M Cisa
Frank M Cisa
E-mail address frank@cisadodds.com
Federal Bar No 138
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
(843) 881-3700
(Fax) (843) 881-2511

June 2, 2006
Mt Pleasant, SC

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY, that on this 2nd day of June 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following

Paul H. Hulsey, Esquire
William J. Cook, Esquire
Abigail B. Walsh, Esquire
Husley Litigation Group LLC
Charleston Harbor
2 Wharfside 3
Charleston SC 29401
E-mail phulsey@hulseylitigationgroup.com

s/ Frank M. Cisa
Frank M. Cisa

June 2, 2006
Mt. Pleasant, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lawton Limehouse, Jr	)	Civil Action No <u>2 06-cv-013879-CWH</u>
	)	
Plaintiff	)	
	)	
vs	)	
	)	
	)	MEMORANDUM IN SUPPORT OF
Paul H. Hulsey and The Hulsey	)	THE PLAINTIFF'S MOTION TO REMAND
Litigation Group LLC	)	
	)	
Defendants	)	

The Plaintiff, Lawton Limehouse, Jr , hereby files this Memorandum in Support of the Plaintiff's Motion for remand pursuant to the Federal Rules Civil Procedure

INTRODUCTION

The Plaintiff filed this action in state court on April 19, 2006 seeking recovery against the Defendants under a common law cause of action for defamation. The suit arises out of a press conference held by the Defendants on April 23, 2004 during which the Defendants made false and defamatory statements concerning the Plaintiff. The statements included the following: that the Plaintiff had engaged in a classic racketeering scheme; that the Plaintiff's conduct set the community back a hundred and fifty years; that the Plaintiff engaged in a blatant case of indentured servitude, and that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano.

Tony Soprano is portrayed as a gangster in the critically acclaimed HBO series "The Sopranos" which is a made for television series aired and shown on the Home Box Office.

Network In the television series Tony Soprano is depicted as a gangster and mobster, a murderer a person involved in prostitution a person engaged in gambling, a person engaged in extortion a person engaged in racketeering, a person who operates a strip club, a person who extorts money from people through physical violence as well as other means, and a person who uses obscene, vulgar and profane language

FEDERAL QUESTION

The Defendants in their Notice of Removal state that this Court has original jurisdiction over this civil action as the Plaintiff's cause of action involves a question of federal law Contrary to the Defendants assertion, the Plaintiff's cause of action involves only questions of state law relative to his common law cause of action for defamation See Plaintiff's Complaint Exhibit "A"

LEGAL STANDARD

Pursuant to 28 U S C § 1331 The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States

In determining whether the Plaintiff's claim arises out of federal law, The Court of Appeals for the Fourth Circuit has applied the well pleaded complaint rule " which holds that courts ordinarily look no further than the Plaintiff's [properly pleaded] Complaint in determining whether a lawsuit raises issues of federal law capable of creating federal question jurisdiction under 28 U S C §1331 Pinney v Nokia, Inc . (Opinion No 03-1433, decided March 16, 2005, page 11) In examining the Complaint the first step is to determine whether federal or state law creates the cause of action If state law creates the claim then the court must also determine whether the Plaintiff's right to relief necessarily depends on a resolution of a substantial question of federal law, in that federal law is a necessary element of one of the well

pleaded claims Under the substantial federal question doctrine "a defendant seeking to remove a case in which state law creates the plaintiff's cause of action must establish two elements (1) that the plaintiff's right to relief necessarily depends on a question of federal law and (2) that the question of federal law is substantial" Dixon 369 F 3d at 816 If the defendant fails to establish either of these elements the claim does not arise under federal law pursuant to the substantial federal question doctrine and removal cannot be justified under this doctrine

ARGUMENT

The instant case, state law creates the claim asserted by the Plaintiff for common law defamation. The Plaintiff makes no allegation of a violation of federal law by the Defendants

The Plaintiff's right to relief does not depend upon or involve a substantial question of federal law The issues involved in the Plaintiff's lawsuit involve whether or not the statements made by the Defendants had defamatory meaning, were published with actual or implied malice and were false

CONCLUSION

Based upon the foregoing the Plaintiff requests that his case be remanded to state court and that the Plaintiff be awarded attorney's fees and cost.

BY s/ Frank M Cisa
Frank M Cisa
E-mail address frank@cisadodds.com
Federal Bar No 138
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Mt Pleasant, SC 29464
(843) 881 3700
(Fax) (843) 881-2511

June 2, 2006
Mt Pleasant, SC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following

Paul H Hulsey Esquire
William J Cook, Esquire
Abigail B Walsh, Esquire
Husley Litigation Group, LLC
Charleston Harbor
2 Wharfside 3
Charleston, SC 29401
E-mail phulsey@hulseylitigationgroup.com

s/ Frank M Cisa
Frank M Cisa

June 2, 2006
Mt Pleasant, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO
LAWTON LIMEHOUSE, Jr	)	
	)	
Plaintiff,	)	
	)	
vs	)	COMPLAINT
	)	
PAUL H HULSEY and THE	)	(DEFAMATION)
HULSEY LITIGATION GROUP,	)	
LLC	)	Jury Trial Demanded
Defendants	)	

FILED
2006 APR 19 PM 1 45
JULIE J. ARMS / RONG
CLERK OF COURT
BY _____

The Plaintiff, above-named, complaining of the Defendants, above-named, would respectfully show unto this honorable Court as follows

PARTIES

- 1 The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina and at all times hereinafter mentioned was engaged in business in the County of Charleston, South Carolina.
- 2 That the Defendant, Paul H. Hulsey, was and is a licensed practicing attorney in the State of South Carolina having his principal place of business in the County of Charleston, State of South Carolina and at all times hereinafter mentioned was an agent, employee, servant and member of the Defendant, The Hulsey Litigation Group LLC
- 3 That the Defendant, The Hulsey Litigation Group, LLC, is a corporation organized and existing under the Laws of the State of South Carolina and at all times hereinafter mentioned was and is operated as a law firm with its principal

2006
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place of business in the County of Charleston, State of South Carolina.

JURISDICTION AND VENUE

- 4 That this Court has jurisdiction over the parties and subject matter of this action and venue is proper in that the Plaintiff is a resident of Charleston County South Carolina, the Defendant, Paul H. Hulsey, is a resident of Charleston County, South Carolina and owns property and conducts business in Charleston County, South Carolina, and the Defendant, The Hulsey Litigation Group, LLC has its principal place of business in Charleston County, South Carolina

FACTUAL BACKGROUND

- 5 The Plaintiff, Lawton Limehouse, Jr. was born in Charleston County and has been a life long resident of Charleston County. The Plaintiff has friends, relatives, acquaintances and business contacts living in Charleston County. has raised a family in Charleston County, and has worked in Charleston County the majority of his life
- 6 That heretofore, in 1999 Lawton Limehouse, Jr., and his father incorporated a staffing agency known as L&L Services, LLC. Thereafter he and his father organized and incorporated another staffing agency known as WLL, LLC
- 7 That the aforesaid staffing agencies employed many individuals relative to the operation of the staffing agencies
- 8 That since 1999, the Plaintiff, Lawton Limehouse Jr. has worked and devoted his full time and efforts to building and establishing the aforesaid staffing agencies
- 9 That heretofore, in 2004 the Defendant, Paul H. Hulsey, individually and as an

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agent and servant of The Hulsey Litigation Group, LLC filed a class action lawsuit on behalf of certain individuals, against the Plaintiff, L&L Services, LLC and WLL, LLC which said lawsuit alleged improper acts and conduct on part of the Plaintiff as well as L&L Services, LLC and WLL, LLC

10 On or about April 23, 2004 the Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post & Courier staff. The Post & Courier is a widely distributed newspaper in Charleston County and throughout other areas of the state of South Carolina.

11 During the news conference and or during the Defendant, Paul H. Hulsey's meeting with members of the news media including a reporter from the Post & Courier staff, the Defendant, Paul H. Hulsey, made false and defamatory statements concerning the Plaintiff with the knowledge and intent that said statements be published by the Post & Courier newspaper as well as by other media located in the Charleston County area which statements included the following to wit:

- 
- a That the Plaintiff had engaged in a classic racketeering scheme;
 - b that the Plaintiff's conduct set the community back 150 years,
 - c that the Plaintiff engaged in a blatant case of indentured servitude,
 - d. that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano

12 That Tony Soprano is portrayed as a gangster on the critically acclaimed, Emmy

and Peabody winning HBO series "The Sopranos" which is a made for TV series which is aired and shown on the Home Box Office network and has been aired and shown for the past five (5) years and continues to be aired and shown on Home Box Office network

- 13 That Tony Soprano in the TV series "the Sopranos" is depicted as
- a. a gangster and mobster;
 - b. a murderer,
 - c. a person engaged in prostitution,
 - d. a person engaged in gambling;
 - e. a person engaged in extortion,
 - f. a person engaged in racketeering,
 - g. a person who operates a strip club,
 - h. a person who extorts money from people through physical violence as well as other means,
 - i. a person who uses obscene, vulgar, and profane language
- 14 The aforesaid statements were made by the Defendant Paul H. Hulsey concerning the Plaintiff, in his individual capacity as well as an agent, servant, employee and member of the Defendant, The Hulsey Litigation Group, LLC
- 15 The Husley Litigation Group, LLC is jointly and severely liable for the acts and omissions of the Defendant, Paul H. Hulsey, as referred to herein.
- 16 That the statements made by the Defendant, Paul H. Hulsey as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against

the Plaintiff and Plaintiff's companies and also with the intent to attract individuals who would become members of the class action suit so the Defendants could potentially earn large sums of money as legal fees

17 These statements made by the Defendant Paul H. Hulsey, as aforesaid, were not privileged, were false and defamatory, and were intended to degrade the Plaintiff and did harm and reduce his character and reputation in the estimation of his friends, acquaintances, business associates, relatives and the public at large and caused the Plaintiff to experience great humiliation, embarrassment and intended to and did in fact disgrace the Plaintiff, and render him odious, contemptible and subject to ridicule.

18 That at the time the Defendant, Paul H. Hulsey, made the aforesaid statements concerning the Plaintiff he knew or in the exercise of reasonable care and diligence should have known that said statements would be published in the Post & Courier as well as by other media and in fact said statements were published by the Post & Courier on April 24, 2004.

19 That the aforesaid statements made by the Defendant have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation and further the Plaintiff has suffered special damages in that he has lost income and has lost his businesses all to his damage and detriment

FOR A FIRST CAUSE OF ACTION

(As to both Defendants Defamation, Slander and Liable)

20 Each and every allegation contained in paragraphs 1-19 above are incorporated

herem by express reference as though fully set forth.

- 21 That the aforesaid statements made by the Defendant, Paul H. Hulsey, had a defamatory meaning in that the statements impeached the honesty, integrity, virtue and reputation of the Plaintiff and exposed him to public hatred, contempt and ridicule, caused him to be shunned or avoided, and injured his office, business and occupation.
- 22 That the statements made and published by the Defendant, Paul H. Hulsey, were made and published with actual or implied malice by the Defendant in an effort to bolster the allegations of the class action lawsuit which he filed against the Plaintiff and Plaintiff's companies so that he and the Defendant, The Hulsey Litigation Group, LLC, could increase their potential for earning large sums of money from the lawsuit as legal fees.
- 23 That the statements made by the Defendant, Paul H. Hulsey, as aforesaid were false.
- 24 That the aforesaid defamatory statements made by the Defendant, Paul H. Hulsey, and communicated to representatives of the Post & Courier and other representatives of the media were made by the Defendant, Paul H. Hulsey, with the expectation that said statements would be published in the media which statements were published by representatives of the press including but not limited to the Post & Courier.
- 25 That the Defendant has engaged in libel per se and slander per se in making the aforesaid defamatory statements concerning the Plaintiff and his businesses with

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the expectation that the aforesaid statement would be published by the news media

26 The Plaintiff has been damaged as aforesaid by the defamatory statements made by the Defendant, Paul H. Hulsey, who intended and expected the statements to be published in the news media and more particularly the Post & Courier. The damages included the Plaintiff's embarrassment, humiliation, mental suffering, caused the Plaintiff injury in his office, business and occupation and further the Plaintiff has expended large sums of money in attorney's fees defending against the defamatory statements made by the Defendants.

27 That the Plaintiff seeks, actual general and special damages against the Defendants as well as punitive damages because the Defendants' actions were intentional or made with the reckless disregard of the Plaintiff's rights in an amount to be determined by the jury.

WHEREFORE the Plaintiff prays for judgment against the Defendants, jointly and severely, for actual damages including general and special damages and punitive damages and the costs of this action.

CISA & DODDS, LLP



Frank M. Cisa
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 881-3700

Mt. Pleasant, SC
This 19th day of April, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CIVIL ACTION NO. 2 06-cv-01379-CWH

Lawton Limehouse, Jr.,

Plaintiff,

v

Paul H. Hulsey, and The
Hulsey Litigation Group
LLC

Defendants

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR REMAND

The Court should deny the Plaintiff's Motion for Remand. Plaintiff's Motion does nothing more than rehash the "well-pleaded complaint rule" which does not apply under circumstances where the removed case arises solely out of another action based on a federal question (RICO) already pending before this United States District Court (*Flores v. Limehouse*, Civil No. 2 04 1295 12). The removed case is nothing more than an attempt of the Plaintiff here to force the Defendants (the attorneys for the *Flores* plaintiffs in the federal action) to prove the claims of the *Flores* plaintiffs in state court, as opposed to this Honorable Court, where they properly belong.

Moreover, although Plaintiff fails to point it out, this Court has already had an opportunity in the related *Flores* litigation to consider and specifically address the issues raised by the Plaintiff's Complaint in the removed case. See *Flores* Docket Entry Nos. 23 & 24 (Motion for an Order Prohibiting Extraditorial Statements).

L.

**Defendants have complied with all procedural requirements necessary
to effectuate removal of the Plaintiff's Complaint.**

Defendant Hulsey Litigation Group, LLC ("HLG") and Defendant Paul H. Hulsey submitted their Notice of Removal of this action to this Court pursuant to 28 U.S.C. § 1441 and 1446 after the Plaintiff commenced his case on or about April 19, 2006 by filing a summons and complaint with the Charleston County Clerk of Court (the "State Court Action"). The State Court Action was assigned Civil Action Number 06 CP 10-1578. Thereafter, Plaintiff served HLG and Mr. Hulsey with a copy of the Summons and Complaint. A copy of the Summons, Complaint, and all other process pleadings and orders served upon HLG and Mr. Hulsey were attached to the Notice of Removal as provided in 28 U.S.C. § 1446(a). Aside from the material attached to the Notice of Removal and the instant Motion for Remand, neither HLG nor Mr. Hulsey is aware of any other process, pleadings or orders served upon them in this action.

The removal by HLG and Mr. Hulsey was timely. HLG and Mr. Hulsey filed their Notice of Removal within one year of the date the action was originally filed and within thirty days of their receipt of the Complaint. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. In addition, pursuant to this Act, the Notice need not be verified. The Notice of Removal was signed pursuant to Rule 11 Fed. R. Civ. P. See 38 U.S.C. § 1446(a).

Promptly after filing this Notice of Removal (on the same afternoon) HLG and Mr. Hulsey gave written notice of the removal to Plaintiff by and through his designated

counsel, and to the Charleston County Clerk of Court for the Court of Common Pleas, as provided in 28 U S C § 1446(d). A copy of the Notice to Plaintiff and a file stamped copy of the Notice provided to the Clerk of Court of Removal of Civil Action to Federal Court (without exhibits) is attached hereto as Exhibit A.

II

Plaintiff's Motion for Remand lacks merit because the removed case "arises under" federal law

Even though Plaintiff attempts to skirt the issue by seeking to limit the Court's inquiry to the face of his Complaint, the Plaintiff cannot avoid the fact that this Court has original jurisdiction over this civil action pursuant to 28 U S C § 1331 (federal question) in that Plaintiff's cause of action arises under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce). A case "arises under" federal law if it requires interpretation of a federal question—in this case—the applicability of civil RICO to the matters already pending before this Court in the *Flores* litigation. Here, the Complaint in the removed case "arises under" federal law. Although the Complaint alleges "Defamation, Slander, and [sic] Liable," in reality the case is based solely upon the Plaintiff's involvement in a racketeering scheme arising under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce), which is already pending before this Court. The Limehouse Plaintiff's allegations in the removed case are governed solely by an interpretation of federal law which is already pending before this Court. This is self evident because the truth is an absolute defense to the allegations the Limehouse Plaintiffs make in state court. See generally, *Ross v Columbia Newspapers Inc* 221 S.E.2d 770 *Dauterman v State-Record Co*, 154 S.E.2d 919 (S.C. 1967) *Parker v Evening Post Pub Co*, 452 S.E.2d

640(S C App,1994) The truth, i e that the Limehouse Defendants engaged in a racketeering enterprise through a scheme to defraud, is a federal question presently being litigated in the *Flores* case Stated another way, in order for the Limehouse Plaintiffs to prevail in state court they must prove that they were not engaged in a racketeering scheme to defraud, did not create a scheme to control the immigrant workers by keeping them in labor camps and did not set up two interrelated companies so as to avoid paying workers for their overtime These issues are clearly being litigated in *Flores* and the Limehouse Plaintiffs entire state court causes of action arise directly and proximately from this Federal case involving the interpretation and application of a specific Federal law The very foundation of the state court action is inextricable intertwined with the multiple federal questions over which this Honorable Court presently exercises jurisdiction No colorable argument can be made that these issues should be relitigated in state court or that they do not arise under the multiple federal questions involved in this Federal case

Merely re-crafting the allegations under a different label (i e, Defamation, Slander, and [sic] Liableness) does not divest this Court of its original and continuing jurisdiction over a matter of interpretation of federal law, requiring this Court to interpret RICO and is sufficient to render this action within the jurisdiction of the federal courts Therefore, this action is removable to this Court pursuant to 28 U S C § 1441

CONCLUSION

For the foregoing reasons the Court should deny the Plaintiff's Motion for
Remand.

DATED June 6, 2006

Submitted by

S/ Paul H. Hulsey
Paul H. Hulsey, Esq., D.S.C. Bar No. 9325
William J. Cook, Esq., D.S.C. Bar no. 7167
Abigail B. Walsh, D.S.C. No. 71291
HULSEY LITIGATION GROUP, LLC
Charleston Harbor
2 Wharfside 3
Charleston SC 29401
Tel. (843) 723-5303
Fax. (843) 723-5307
E mail phulsey@hulseylitigationgroup.com
wcook@hulseylitigationgroup.com
awalsh@hulseylitigationgroup.com

ATTORNEYS FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY**, that on this 6th day of June 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following

Frank M Cisa, Esquire
622 Johnnie Dodds Blvd
Mount Pleasant, SC 29464
tel (843) 881 3700
fax (843) 881-2511
E-mail frank@cisadodds.com

S/ Paul H Hulsey
HULSEY LITIGATION GROUP LLC
Paul H Hulsey, D S C No 9325

EXHIBIT
A

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Civil No 06-CP-10-1578

Lawton Lynchhouse, Jr.,

Plaintiff,

v

Paul H. Hulsey, and The
Hulsey Litigation Group,
LLC,

Defendants

To The Clerk of the Court
Court of Common Pleas for the State of South Carolina, Charleston County

FILED
2006 MAY -5 PM 4 49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PLEASE TAKE NOTICE, that on May 5, 2006, defendant Hulsey Litigation Group, LLC, filed a Notice of Removal of this action in the United States District Court for the District of South Carolina. A true and correct copy of the Notice of Removal is annexed hereto

PLEASE TAKE FURTHER NOTICE that the filing of the Notice of Removal in the United States District Court and the filing of this Notice effect the removal of this action, and pursuant to 28 U S C § 1446(d) the above-captioned action may proceed no further unless and until the case is remanded.

Respectfully submitted this 5th day of May 2006, in Charleston, South Carolina.



Paul H. Hulsey
William J. Cook, USDC SC No 7167
Abigail B. Walsh, USDC SC No 71291
HULSEY LITIGATION GROUP, LLC
Charleston Harbor

2 Wharfside 3
Charleston, SC 29401
Tel 843-723-5303
Fax 843-723-5307

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served upon counsel of record, via United States mail to the following:

Frank M. Cisa, Esq
CISA & DODDS, LLP
622 Johnnie Dodds Blvd.
Mt Pleasant, SC 29464
(843) 881-3700


Paul H. Hulsey

May 5, 2006
Charleston, SC

FILED
2006 MAY -5 PM 4:49
JULIE J. ARISTRONG
CLERK OF COURT
BY _____

JS-44 (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 (rev. 11/04) coversheet and the information contained here in neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Lawton Linchouse, Jr.

(b) County of Residence of First Listed Plaintiff Charleston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's Firm Name, Address, and Telephone Number

Frank M. Eisa, 622 Johannes Dadds Blvd,
Mt Pleasant, SC 29464

DEFENDANTS

Paul H. Hulsey + The Hulsey Litigation
Group, LLCCounty of Residence of First Listed Defendant Charleston
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

Paul H. Hulsey, William J. Cook, Abigail B.
Walsh

II BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Plaintiff Defendant
- Citizen of This State ☐ 1 ☐ 3 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACTS	PERSONAL INJURY	PERSONAL PROPERTY	LABOR	PROPERTY RIGHTS	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 360 Personal Injury	☐ 610 Agriculture	☐ 420 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 365 Personal Injury Product Liability	☐ 620 Other Food & Drug	☐ 425 Withdrawal 28 USC 157	☐ 410 Airframe
☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 368 Automobile Personal Injury Product Liability	☐ 625 Drug Related Securities of Property 21 USC 881	☐ 430 Banks and Banking	☐ 430 Consumer
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability	☐ 370 Other Personal	☐ 630 Liquor Laws	☐ 450 Consumer Credit	☐ 450 Disposition
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	☐ 371 Truth in Lending	☐ 640 R.R. & Truck	☐ 470 Copyrights	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 380 Other Personal Property Damage	☐ 650 Airline Regs	☐ 480 Patents	☐ 480 Consumer Credit
☐ 152 Recovery of Debtor's Student Loans (Real, Veterans)	☐ 350 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 660 Occupational Safety/Health	☐ 490 Trademark	☐ 490 Cable/Sat TV
☐ 153 Recovery of Overpayment of Veterans Benefits	☐ 355 Motor Vehicle Product Liability	☐ 390 Other Personal	☐ 690 Other	☐ 500 Copyrights	☐ 490 Cable/Sat TV
☐ 160 Stockholders Suits	☐ 360 Other Personal Injury	☐ 400 Other Personal	☐ 710 Fair Labor Standards Act	☐ 510 Patents	☐ 500 Securities/Commodities/Banking
☐ 170 Other Contracts	☐ 410 Voting	☐ 401 Other Personal	☐ 720 Labor/Mgmt. Relations	☐ 520 Property Rights	☐ 510 Securities/Commodities/Banking
☐ 180 Contract Product Liability	☐ 420 Employment	☐ 402 Other Personal	☐ 730 Labor/Mgmt. Relations & Dispute Resolution Act	☐ 530 Tenants	☐ 520 Securities/Commodities/Banking
☐ 190 Prudence	☐ 430 Housing/Accommodations	☐ 403 Other Personal	☐ 740 Railway Labor Act	☐ 540 Trademark	☐ 530 Tenants
☐ 200 Real Property	☐ 440 Welfare	☐ 404 Other Personal	☐ 750 Other Labor Legislation	☐ 550 Copyrights	☐ 540 Trademark
☐ 210 Land Condemnation	☐ 445 Amer. w/Disabilities Employment	☐ 405 Other Personal	☐ 760 Equal Pay Act	☐ 560 Copyrights	☐ 550 Copyrights
☐ 220 Foreclosure	☐ 446 Amer. w/Disabilities Other	☐ 406 Other Personal	☐ 770 Equal Pay Act	☐ 570 Copyrights	☐ 560 Copyrights
☐ 230 Rent Lease & Ejectment	☐ 447 Other Civil Rights	☐ 407 Other Personal	☐ 780 Equal Pay Act	☐ 580 Copyrights	☐ 570 Copyrights
☐ 240 Torts to Land		☐ 408 Other Personal	☐ 791 Equal Pay Act	☐ 590 Copyrights	☐ 580 Copyrights
☐ 245 Tort Product Liability		☐ 409 Other Personal		☐ 600 Copyrights	☐ 590 Copyrights
☐ 250 All Other Real Property		☐ 410 Other Personal		☐ 610 Copyrights	☐ 600 Copyrights

V ORIGIN

- ☐ 1 Original Proceedings
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Remanded or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless necessary.)

18 USC § 1964(a) + (c) (RICO), 28 USC § 1367 (Commerce)

Brief description of cause:

Scheme to defraud workers of lawful wages, inter alia

VII REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint

JURY DEMAND ☒ Yes ☐ No

VIII RELATED CASE(S) IF ANY

(See instructions)

JUDGE HouckDOCKET NUMBER 2 04 12 95 12

DATE

May 3, 2006

SIGNATURE OF ATTORNEY OF RECORD

Frank M. Eisa

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING JPP _____ JUDGE _____ MAG JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CIVIL ACTION NO _____

Lawton Limehouse, Jr.,

Plaintiff,

v

Paul H. Hulsey, and The
Hulsey Litigation Group,
LLC,

Defendants

NOTICE OF REMOVAL

Defendant Hulsey Litigation Group, LLC ("HLG") and Defendant Paul H. Hulsey submit this Notice of Removal of this action to the United States District Court for the District of South Carolina, Charleston Division, pursuant to 28 U.S.C. § 1441 and 1446. The Court should note that litigation is already pending before this Court (*Flores v. Limehouse*, Civil No. 2:04-1295-12) involving the issues from which the Plaintiff's Complaint arises.

In addition, this Court has already had an opportunity in that litigation to consider and specifically address the issues raised by the Plaintiff's Complaint. See Docket Entry Nos. 23 & 24 (Motion for an Order Prohibiting Extraditorial Statements). In support of this removal, HLG states the following:

1. Plaintiff commenced this action on or about April 19, 2006, by filing a summons and complaint with the Charleston County Clerk of Court (the "State Court Action"). The State Court Action was assigned Civil Action Number 06-CP 10-1578. A copy of the Summons, Complaint, and all other process, pleadings, and

FILED
2006 MAY -5 PM 4 52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

orders served upon HLG and Mr. Hulsey are attached hereto as Exhibit A as provided in 28 U.S.C. § 1446(a)

- 2 On April 19, 2006, Plaintiff served HLG with a copy of the Summons and Complaint. On April 20, 2006, Plaintiff served Paul H. Hulsey with a copy of the Summons and Complaint. Aside from the material in Exhibit A, neither HLG nor Mr. Hulsey is aware of any other process, pleadings or orders served upon them in this action.
- 3 HLG and Mr. Hulsey file this Notice of Removal within one year of the date the action was originally filed and within thirty days of their receipt of the Complaint. Removal is accordingly timely.
- 4 Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. In addition, pursuant to this Act, the Notice need not be verified.
- 5 This Notice of Removal is signed pursuant to Rule 11, Fed. R. Civ. P. See 38 U.S.C. § 1446(a).
- 6 Promptly after filing this Notice of Removal, HLG and Mr. Hulsey shall give written notice of the removal to Plaintiff by and through his designated counsel, and to the Charleston County Clerk of Court for the Court of Common Pleas, as provided in 28 U.S.C. § 1446(d). A copy of the Notice to Plaintiff and to the Clerk of Court of Removal of Civil Action to Federal Court (without exhibits) is attached hereto as Exhibit B.

JURISDICTION

- 7 This Court has original jurisdiction over this civil action pursuant to 28 U S C § 1331 (federal question) in that Plaintiff's cause of action arises under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce)

FEDERAL QUESTION JURISDICTION

- 8 A district court has original jurisdiction over cases "arising under" federal law 28 U S C § 1331
- 9 A case arises under federal law if it requires interpretation of a federal question, in this case, namely the applicability of civil RICO to the matters already pending before this Court in the *Flores* litigation. Exhibit C
- 10 Although Plaintiff has crafted his allegations under the guise of an action for "Defamation, Slander, and [sic] Libel" in reality the action is based upon the Plaintiff's involvement in a racketeering scheme arising under 18 U S C § 1964(a) & (c) (RICO) and 28 U S C § 1367 (commerce), which is already pending before this Court.
- 11 The Plaintiff's allegations are governed solely by an interpretation of federal law which is already pending before this Court. Merely re-crafting the allegations under a different label does not divest this Court of its continuing jurisdiction over a matter of interpretation of federal law, which requires this Court to interpret RICO and is sufficient to render this action within the jurisdiction of the federal courts
- 12 Therefore, this action is removable to this Court pursuant to 28 U S C § 1441

VENUE

13 Removal to the United States District Court for the District of South Carolina,
Charleston Division, is proper because the Complaint was filed in Charleston
County, South Carolina. 28 U S C § 1441(a)

WHEREFORE, Defendant HLG gives notice that the above-described action
pending against it in the Court of Common Pleas Charleston County, is removed to this
Court.

DATED May 5, 2006

s/ Paul H. Hulsey
Paul H Hulsey
William J Cook, USDC SC No 7167
Abigail B Walsh, USDC SC No 71291
HULSEY LITIGATION GROUP LLC
Charleston Harbor
2 Wharfside 3
Charleston, SC 29401
Tel 843-723-5303
Fax 843-723-5307

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served upon counsel of record, via United States mail to the following:

Frank M. Cisa, Esq
CISA & DODDS, LLP
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
(843) 881-3700

s/ Paul H. Hulsey
Paul H. Hulsey

May 5, 2006
Charleston, SC

FILED
2006 MAY -5 PM 4:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number 08-CP 10 1578

Plaintiff

LAWTON LIMEHOUSE, JR

vs

Defendant

PAUL H HULSEY AND THE HULSEY LITIGATION GROUP LLC

For

Frank Cisa

CISA & DODDS

622 Johnnie Dodds Blvd

Mt Pleasant SC 29464

FILED
2006 AUG 21 PM 1 53
JULIE J. AUSTIN
CLERK OF COURT
BY _____

Received by FALCON EXPRESS SERVICES LLC to be served on PAUL H HULSEY, 2 WHARFSIDE ST, CHARLESTON SC 29403

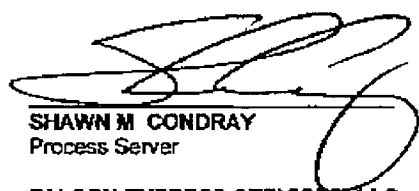
I SHAWN M CONDRAY being duly sworn depose and say that on the 21st day of April, 2006 at 3 35 pm, I

Individually Served the within named person with a true copy of this CIVIL ACTION COVER SHEET SUMMONS AND COMPLAINT with the date and hour endorsed thereon by me pursuant to State Statutes

I certify that I am over the age of 18 and have no interest in the above action

Subscribed and Sworn to before me on the 3rd day of August 2006 by the affiant who is personally known to me


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 5-19-2016


SHAWN M CONDRAY
Process Server

FALCON EXPRESS SERVICES, LLC
P O Box 874
Charleston SC 29402-0874
(843) 577 9696

Our Job Serial Number 2006000566

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number 06-CP-10-1578

Plaintiff

LAWTON LIMEHOUSE JR.

vs.

Defendant

PAUL H. HULSEY AND THE HULSEY LITIGATION GROUP LLC

For

Frank Cisa

CISA & DODDS

622 Johnnie Dodds Blvd

Mt. Pleasant, SC 29464

Received by FALCON EXPRESS SERVICES LLC to be served on THE HULSEY LITIGATION GROUP
REGISTERED AGENT M. LISA DUNCAN 2 WHARFSIDE ST CHARLESTON, SC 29403

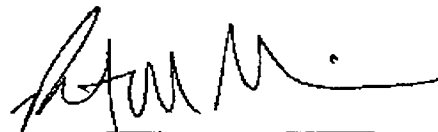
I Rob Morrison being duly sworn depose and say that on the 20th day of April 2006 at 10 43 am I

Individually Served the within named person with a true copy of this CIVIL ACTION COVER SHEET, SUMMONS
AND COMPLAINT with the date and hour endorsed thereon by me pursuant to State Statutes

I certify that I am over the age of 18 and have no interest in the above action

Subscribed and Sworn to before me on the 8th day of
August 2006 by the affiant who is personally known to
me

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 5-24-07



Rob Morrison
Process Server

FALCON EXPRESS SERVICES LLC
P O Box 874
Charleston SC 29402 0874
(843) 577-9696

Our Job Serial Number 2006000567

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LAWTON LIMEHOUSE, Jr)
)
Plaintiff,)
)
vs)
)
PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP)
LLC)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP-10-1578

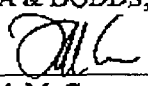
REQUEST FOR ENTRY OF DEFAULT

FILED
2006 AUG 21 PM 1 54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO JULIE J. ARMSTRONG, CLERK OF COURT FOR CHARLESTON COUNTY

You will please enter default of the Defendant, Paul H. Hulsey, on the calendar (file book) for failure to plead or otherwise defend pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure, as appears in the Affidavit of Frank M. Cisa, attached hereto

CISA & DODDS, LLP



Frank M. Cisa

This 9th day of August, 2006
Mt Pleasant, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP-10-1578

LAWTON LIMEHOUSE, Jr)
)
Plaintiff,)

vs)

PAUL H HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
Defendants)

REQUEST FOR ENTRY OF DEFAULT

FILED
2006 AUG 21 PM 1:54
JULIE J. ARMSTRONG
CLERK
COURT

TO JULIE J ARMSTRONG CLERK OF COURT FOR CHARLESTON COUNTY

You will please enter default of the Defendant, The Hulsey Litigation Group LLC
on the calendar (file book) for failure to plead or otherwise defend pursuant to Rule 55(a) of the
South Carolina Rules of Civil Procedure as appears in the Affidavit of Frank M Cisa, attached
hereto

CISA & DODDS, LLP



Frank M Cisa

Thus 9th day of August, 2006
Mt Pleasant, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP-10 1578

LAWTON LIMEHOUSE, Jr)
Plaintiff)

vs)

PAUL H HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
Defendants)

AFFIDAVIT OF DEFAULT

FILED
2006 AUG 21 PM 1 54
JULIE M. HONG
CLERK OF COURT

PERSONALLY appeared before me, Frank M Cisa who, first being duly sworn, deposes and says that he is the attorney for the Plaintiff, in the above-captioned action. That although more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant, Paul H Hulsey as evidenced by the Proof of Service on file with this Court, no Answer has been served upon the Plaintiff in this case, and that the said Defendant, Paul H Hulsey is now in default.

FURTHER THE DEPONENT SAYETH NOT!

Sworn to before me this 9th day of August, 2006

Ashley Ponder
NOTARY PUBLIC OF SOUTH CAROLINA

Commission Expires 11/7/2015

Frank M Cisa

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LAWTON LIMEHOUSE, Jr)
)
Plaintiff,)
)
vs.)
)
PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP)
LLC)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP-1031578

AFFIDAVIT OF DEFAULT

2006 AUG 21 PM 1:54
JULIE A. FINE, RONG
CLERK, OF COURT

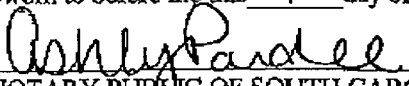
FILED

PERSONALLY appeared before me, Frank M. Cisa, who, first being duly sworn, deposes and says that he is the attorney for the Plaintiff, in the above-captioned action. That although more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant The Hulsey Litigation Group as evidenced by the Proof of Service on file with this Court, no Answer has been served upon the Plaintiff in this case, and that the said Defendant, The Hulsey Litigation Group is now in default.

FURTHER THE DEPONENT SAYETH NOT


Frank M. Cisa

Sworn to before me this 9th day of August, 2006


NOTARY PUBLIC OF SOUTH CAROLINA

Commission Expires 11/7/2015

AW

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 LAWTON LIMEHOUSE, Jr)
)
 Plaintiff,)
)
 vs)
)
 PAUL H. HULSEY and THE)
 HULSEY LITIGATION GROUP,)
 LLC)
 Defendants)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO 2006 CP-10-1578

FILED
 2006 AUG 22 AM 9 03
 JULIE J. APHSARONG
 CLERK OF COURT
 BY _____

RULE 55(a) ENTRY OF DEFAULT

00-10205

It appearing from the Affidavit of Frank M. Cisa, attorney for the Plaintiff and from the Affidavit of Service that the Defendant Paul H. Hulsey, was served with a Summons and Complaint in the above-entitled action on April 21, 2006

And it further appearing that no Answer has been served upon the attorney for the Plaintiff or filed in this case by or on behalf of the Defendant, Paul H. Hulsey, and that the Defendant, Paul H. Hulsey, is now in default.

NOW THEREFORE, the Defendant Paul H. Hulsey's default is hereby entered in the calendar (file book) pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure


 CLERK OF COURT

This 21st day of August, 2006
 Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LAWTON LIMEHOUSE, Jr)
)
Plaintiff,)
)
vs)
)
PAUL H HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
)
Defendants)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006 CP 10-1578

RULE 55(a) ENTRY OF DEFAULT

FILED
2006 AUG 22 AM 9 05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

06-10206
It appearing from the Affidavit of Frank M. Cisa, attorney for the Plaintiff and from the Affidavit of Service that the Defendant, The Hulsey Litigation Group, LLC, was served with a Summons and Complaint in the above-entitled action on April 20, 2006 ,

And it further appearing that no Answer has been served upon the attorney for the Plaintiff or filed in this case, by or on behalf of the Defendant, The Hulsey Litigation Group, LLC and that the Defendant, The Hulsey Litigation Group, LLC is now in default

NOW, THEREFORE, the Defendant The Hulsey Litigation Group LLC's default is hereby entered in the calendar (file book) pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure

This 21st day of August, 2006
Charleston, South Carolina


CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
LAWTON LIMEHOUSE Jr)
)
Plaintiff,)
)
vs)
)
PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP-10 1578

MOTION TO SET ASIDE
ENTRY OF DEFAULT

2006 AUG 29 PM 1 10
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO THE HONORABLE COURT

The Defendants Paul H. Hulsey and Hulsey Litigation Group submit the following Motion to Set Aside Notice of Default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

PROCEDURAL HISTORY

Plaintiff filed a Complaint before this Court on April 19, 2006 which was served upon Defendants on April 21, 2006. Defendants filed a removal to the United States District Court in Charleston on May 5, 2006. After holding a hearing, the United States District Court remanded the case on July 19, 2006. The Clerk of this Honorable Court entered the Order remanding the case on July 21, 2006, but did not mail the notice until July 27, 2006. On August 21, 2006, Plaintiff prematurely moved for the Entry of Default Judgment. The Entry of Default was filed by the Clerk on August 22, 2006.

2006-10517

ARGUMENT

This Honorable Court should set aside the Entry of Default entered in this case as Defendants were not in default and still had time to answer the Complaint on the date Plaintiff moved for Default Judgment. Rule 12 of the South Carolina Rules of Civil Procedure provides that a Defendant has 30 days from the date process is served to file a responsive pleading to the Complaint. Rule 12(a), SCRCP. Plaintiff filed a Notice of Removal on May 5, 2006, thus this Court lost jurisdiction over the matter until and unless the case was remanded. *See Davis v. Davis*, 229 S.E.2d 847, 848 (SC 1976).

Once the case was remanded back to this Court, the Defendants had 30 days from the service of the notice of the Order remanding the case to file an answer to the Complaint. Since the Court noticed the Order remanding the case by mail, Defendants had an additional five days to file this answer pursuant to Rule 6(e). Rule 6(e), SCRCP. Thus, Defendants had 35 days from July 27, 2006 to file a responsive pleading to the Complaint. Plaintiffs would not have been in Default until August 31, 2006.

In addition, the Entry of Default should be set aside as Plaintiff has not followed the proper procedural requirements. Defense counsel made an appearance in this case when they filed the Notice of Removal to the United States District Court. Plaintiff ignored this and failed to serve Defendants with a copy of the Request for Entry of Default as required by Rule 5(b)(1) of the South Carolina Rules of Civil Procedure. Furthermore, Plaintiff did not follow the requirements of Rule 55(b)(1) of the South Carolina Rules of Civil Procedure. Plaintiffs filed an Affidavit of Default in support for the Request for Entry of Default. Frank M. Cisa stated in the Affidavit that Defendants were in default. This affidavit was sworn to on August 9, 2006. As was shown above,

Defendants were not in Default on that day. Plaintiff failed to follow the requirements set out by Rule 55(b)(1) by filing a defective affidavit. The entry of default should be set aside. *See Beckman Concrete Contractors Inc. v. United Fire and Cas. Co.* 600 S.E.2d 76, 80 (S.C. App. 2004) (setting aside entry of default for failing to follow the requirements of Rule 55(b)(1)).

Furthermore, Defendants have a meritorious defense to this action. The truth is an absolute defense to an action for libel and slander. *Erickson v. Jones Street Publishers LLC*, 629 S.E.2d 653, 661 n. 2 (S.C. 2006). This action arises from statements made by Defendant related to a RICO class action brought in the United States District Court by former employees of Plaintiff who allege that Plaintiff engaged in a racketeering scheme with the intent to deny his employees of rightfully earned wages. See *Second Amended Complaint* attached as Exhibit A. The employees have demonstrated and the District Court has upheld the validity of the RICO allegations on multiple occasions. See *RICO Case Statement* attached as Exhibit B, *Order Denying Motion for Summary Judgment and Motion to Dismiss* attached as Exhibit C and *Motion for Class Certification* attached as Exhibit D. In addition, Defendants maintain that the evidence in the racketeering case shows that Plaintiff in fact engaged in racketeering activity. Further, the Plaintiffs and their business conduct were the subject of numerous newspaper articles describing in exquisite detail all of the facts from which the Plaintiffs now complain. Thus, Defendants have a meritorious defense in this action.

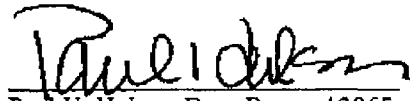
Finally, Plaintiffs will suffer no prejudice if the Entry of Default is set aside. This is not a case of liquidated damages. Thus, Plaintiff would still have to present evidence to the Court that it in fact suffered damages as a result of Defendants' actions. See Rule

55(b)(2), SCRCF In fact no prejudice can be shown by Plaintiffs Defendants, on the other hand, would be severely prejudiced if Default Judgment were entered as they would not have an opportunity to present evidence which in fact shows that Plaintiff engaged in racketeering activities

Defendants meet the requirements of Rule 55(c) and have shown good cause for setting aside an entry of Default

WHEREFORE, for the foregoing reasons this Honorable Court should set aside the Entry of Default

Respectfully submitted this 29th day of August, 2006,

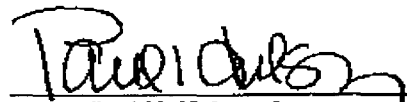


Paul H. Hulsey, Esq., Bar no 12865
HULSEY LITIGATION GROUP, LLC
Charleston Harbor
2 Wharfside 3
Charleston, SC 29401
Tel (843) 723 5303
Fax (843) 723-5307

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date a copy of the for going has been sent via First Class, United States Mail this 29th day of August, 2006 to

Frank M. Cisa
622 Johnnie Dodds Blvd
Mt Pleasant SC
(843) 881-3700-(tel)
(843) 881-2511-(fax)



Paul H. Hulsey, Esq

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action No. 2:04-cv-01295-12

US
DISTRICT
COURT

Maximino Flores ~~Maximina Flores~~
Hugo Jean Gerard Isaias Flores Lagunes
Individually and on Behalf of Others
Similarly Situated

Plaintiffs

vs.

SECOND AMENDED COMPLAINT
TRIAL BY JURY DEMANDED

Lawton Limehouse Sr. Lawton Limehouse Jr.
L&L Services LLC WLL LLC unknown
John Doe individuals and unknown businesses
including, but not limited to A B & C temporary
staffing agencies farms hotels restaurants golf
courses construction companies landscaping
services cleaning services municipalities and
other undiscovered businesses owned by or
affiliated with Defendants

Defendants

HULSEY LITIGATION GROUP LLC
Paul H. Hulsey D.S.C. Bar No. 9525
William J. Cook D.S.C. Bar No. 7167
Marco T. Torres D.S.C. Bar No. 9536
Charleston Harbor
2 Wharfside 3
Charleston SC 29401
tel (843) 723 5303
fax (843) 723 5307

ATTORNEYS FOR PLAINTIFFS AND CLASS MEMBERS



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L INTRODUCTION

- 1 This class action Complaint arises out of the employee abuses by Defendant Lawton Limehouse Sr Defendant Lawton Limehouse Jr Defendants L&L Services LLC and WLL LLC and other John Doe and A B & C Defendants as well through violations of P L 91-452 84 Stat 922 941 (1970) (hereinafter 1970 Act) 18 U S C §§ 1961 to 1966 as well as violations of other federal and state laws as detailed below
- 2 This Complaint is brought by the Plaintiffs on their behalf and for all others similarly situated to vindicate their rights and the rights of a class of similarly situated persons (hereinafter Class Members) to receive full fair and lawful compensation for their labor The Defendants acts and omissions include but are not limited to an unlawful scheme to cheat, steal and convert (hereinafter Scheme to Cheat) the money and property of the Plaintiffs and Class Members who provided labor services in exchange for wages This Scheme to Cheat the Plaintiffs for the economic benefit of the Defendants involves among other crimes harboring aliens, false identification documents false immigrant documents federal and state extortion, and the transportation of property stolen or converted and money laundering
- 3 Plaintiffs and Class Members seek actual, treble and where appropriate, punitive damages, and pre and post-judgment interest an accounting, injunctive relief including prohibitions and disgorgement and costs including attorney fees

II JURISDICTION AND VENUE

- 4 This Court has jurisdiction over this action under the 1970 Act 18 U.S.C. § 1964(a) and (c) (RICO omitted) 28 U.S.C. §§ 1331 (federal question) and 28 U.S.C. § 1332 (commerce). Supplemental jurisdiction under 28 U.S.C. § 1367 exists as to those claims that are so related to the federal claims in that they form part of the same case or controversy.
- 5 Personal jurisdiction and venue are proper in this Court under the 1970 Act 18 U.S.C. § 1965 and 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district.

III PARTIES

- 6 Defendants Lawton Limehouse Sr. and Lawton Limehouse Jr. started Defendant L&L Services LLC and Defendant WLL LLC (hereinafter Individual Defendants) in September 1999 and April 2000 respectively, or perhaps earlier as discovery may disclose to provide temporary employees to Charleston, South Carolina businesses. Other undiscovered individuals are denominated as Defendant John Doe and other undiscovered businesses are denominated as Defendants A, B, & C. Their identities will be disclosed as discovery progresses.
- 7 The John Doe and A, B, & C Defendants either knowingly or willfully and recklessly turned a blind eye to the impropriety and illegality of the conduct of the Individual Defendants, and either aided and abetted, conspired, or participated in their Scheme to Cheat by providing continuous demand for temporary staffing.

IV. RELEVANT TIMES

- 8 The Enterprise pled hereinafter was formed no later than 1999 if not earlier and continued in existence through the date of the filing of this Complaint. The Scheme to Cheat was formed on or before 1999 if not earlier and continued in existence through the date of the filing of this Complaint. The pattern of conduct unlawful under the 1970 Act is virtually coterminous with the Scheme to Cheat and the Enterprise.

V. DEFINITIONS

- 9 As used in this Complaint, "transport or transported" means (1) placing in any post office or authorized depository for mailed matter any matter or thing to be delivered by the United States Postal Service (2) causing to be deposited any matter or thing to be delivered by any private or commercial interstate carrier (3) taking or receiving therefrom any such matter or thing (4) knowingly causing to be delivered by any such means any such matter and (5) using wire communication or telephone including radio or other means of communication or transport each in interstate or foreign commerce.

VI. THE SCHEME TO CHEAT

- 10 The Plaintiffs and Class Members in this action were lured by the Defendants for which they worked at various area businesses as temporary employees.
- 11 The businesses that contract employees from Defendants Enterprise paid salaries and wages directly to the individual Defendants. The businesses benefited by not paying wages or benefits such as health or worker's compensation insurance.

- 12 The Individual Defendants in turn took at least \$4.00 per hour from each of their employees' wages and then issue a paycheck to the employees from their own payroll
- 13 Each week the Defendants' managers told the employees at which area businesses they needed to report for work. The Defendants provided vans to shuttle the employees back and forth from the substandard company owned/leased residences where the majority of the company employees were harbored to the various work sites
- 14 The housing the Individual Defendants provided was substandard and yet the workers were charged for it. Often ten to thirty and sometimes more employees were crowded into the homes. Many of the homes used by Defendants to harbor their employees have been deemed uninhabitable by city inspectors, but Defendants still deduct rent from Employees paychecks
- 15 The Plaintiffs and Class Members allege that Defendants developed a Scheme to Cheat whereby they would illegally willfully and consistently withhold portions of their employees' wages without any justification or right under state or federal law. For example, employees would work a forty (40) hour work week and would be compensated for either thirty-five (35) or thirty-seven (37) hours without written or verbal notification of said deductions or justification for said deductions
- 16 The Plaintiffs and Class Members allege Defendants developed a Scheme to Cheat whereby they would illegally willfully and consistently fail to compensate their employees at the rate of one-half times the regular rate for hours worked in

excess of forty (40) hours a week. For example Plaintiffs and Class Members would often work sixty (60) to seventy (70) hours a week and received no overtime pay.

17 Moreover, in order to circumvent the federal overtime requirements Defendants would divide the hours employees worked between two companies so that an employee who worked over forty (40) hours would receive two checks, one issued by L&L Services and another from WLL LLC. The employee was thereby denied the federally mandated time and half compensation for his/her hours worked over forty (40) in a week.

18 Although the Limehouse Defendants set up two companies they were for all intents and purposes one and the same company.

19 In addition to dividing the hours employees worked between two companies (L&L Services and WLL LLC) to circumvent federal overtime wage requirements Defendants would also routinely issue pay checks to employees that reflected over forty (40) hours a week but were compensated at the same pay rate for all of the hours with no explanation as to why they were denied overtime pay.

20 Plaintiffs and Class Members allege Defendants manufactured and provided Plaintiffs and Class Members false Resident Alien cards and Social Security cards.

VII. FACTS RELEVANT TO REPRESENTATIVE PLAINTIFFS

Flores

21 Plaintiff Maximino Flores ("Flores") worked for the Defendants from approximately February 2002 through February 2004.

- 22 Through Defendants' employment agencies Flores worked at various businesses and companies including several Charleston restaurants and landscaping companies. He also collected trash for local municipalities.
- 23 Flores regularly worked over forty (40) hours a week in landscaping jobs during the day and at various restaurants in the evening. Both jobs were coordinated by and paid through Defendants' companies.
- 24 In addition Defendants, by and through their agents, advised Flores that if he worked two shifts in one day he would need to use a different name at the second job.
- 25 Defendants then provided Flores with a Resident Alien card and Social Security card bearing the name of Ostar Mejias. Plaintiff Flores asserts that Defendants' identification and Social Security card scheme was used as a means to regularly deny him overtime wages.
- 26 Defendants also routinely withheld hours that Flores worked during the week from his paycheck. Flores informed Defendants of the missing hours on several occasions; he was credited for some of these. However, at the time of Flores' termination from Defendants' companies, he was owed approximately twelve hours of wages. He has never received payment for those hours.

Maximina

- 27 Maximina Flores (Maximina) worked for the Defendants from approximately September 2003 to February 2004.
- 28 Through Defendants' temporary staffing agencies Maximina worked in housekeeping and at local restaurants.

29 Maximina alleges that at least on one occasion she was willfully and illegally denied overtime compensation during a week she worked fifty six hours. In addition Defendants willfully failed to compensate Maximina for at least twenty-two hours she worked at two local restaurants.

Gerard

30 Plaintiff Hugo Jean Gerard (Gerard) worked for the Defendants from September 2003 to April 2004.

31 Through Defendants employment agencies, Gerard worked for local catering and construction companies and also collected trash for a local municipality.

32 Gerard regularly worked over forty (40) hours a week at various area businesses all of which were coordinated by and paid through Defendants companies. Although Gerard regularly worked over forty (40) hours a week he was routinely willfully and illegally denied overtime wages.

33 In addition, Gerard alleges that Defendants routinely withheld hours he worked during the week from his paycheck without justification or cause. Gerard believes he was willfully and illegally not paid for at least ten hours he worked at various companies through Defendants temporary staffing agency.

Lagunes

34 Plaintiff Isatis Flores Lagunes (Lagunes*) worked for the Defendants from August 2003 to February 2004. Through Defendants temporary staffing agency Lagunes worked for various landscaping companies and restaurants and for local municipalities collecting trash.

35 Lagunes worked at least fifty hours a week in landscaping and trash collecting job during the day and restaurants in the evening, all of which were coordinated by and paid through Defendants' companies. Although Lagunes regularly worked fifty (50) hours a week or more, he was routinely, willfully and illegally denied overtime wages.

36 In addition, Lagunes alleges that Defendants routinely withheld hours he worked during the week from his paycheck without justification or cause. Lagunes believes he was willfully and illegally not paid for approximately twenty-four (24) hours he worked at various companies through Defendants' temporary staffing agency.

37 Defendants also provided Lagunes with a false resident alien card and false Social Security Card. Plaintiff Lagunes asserts that Defendants' identification and Social Security card scheme was used as a means to regularly deny him overtime wages.

38 On information and belief, the Defendants treated all as yet unidentified individuals in a similar fashion.

VIII. CLASS ACTION ALLEGATIONS

Class Action Rule 23

39 The Representative Plaintiffs bring this action individually and on behalf of the Class pursuant to Rule 23, FRCP.

40 The proposed class does not include directors, officers, or employees of the Defendant companies.

- 41 Class Members include all persons who worked for the Defendants and their companies who did not receive their hourly wages and/or overtime wages in accordance with federal and state law
- 42 Upon information and belief the class period begins at least five years prior to the date of the filing of the Complaint in this action

Numerosity

- 43 Class members are numerous. Joinder is impracticable. Plaintiff believes there are hundreds if not thousands of Class Members. Their exact number and identities are known by Defendants.

Typicality

- 44 Plaintiffs' claims and any defenses thereto are typical of the Class Members' arise from the same course of conduct and involve questions of fact and law common to the Class.

Commonality

- 45 Any claims or defenses of Defendants are common to all Class Members including Plaintiffs and are typical of the claims and defenses they will raise against the Class.

Predominance

- 46 The commonality of claims and defenses predominate over any individual issues.
- 47 Plaintiffs and the Class Members were damaged in the same way by the same wrongful conduct of the Defendants.
- 48 Representative questions of law and fact common to the Plaintiffs and Class Members include but are not limited to

- a Whether Defendants illegally manufactured government documentation to allow them to perpetuate their illegal practices, including their failure to pay wages and overtime to Plaintiffs and Class Members
- b Whether Defendants failed to pay wages for hours actually worked as required by South Carolina law
- c Whether Defendants failed to pay overtime wages as required by federal law
- d Whether Defendants conspired to violate state and federal laws for personal financial gain
- e Whether Defendants used extortion and threats of violence or retaliation by government authorities to ensure Plaintiffs and Class Members were compelled to remain a part of their subterfuge
- f Whether Defendants were unjustly enriched by their failure to pay wages and overtime pay to Plaintiffs and Class Members and
- g Other violations of state and federal law articulated herein and other yet undiscovered violations of state and federal law

Adequacy of Representation

- 49 Plaintiffs will fairly and adequately protect and represent the interests of the Class
- 50 The interests of the Plaintiffs are coincidental with and not antagonistic to those of the Class Members
- 51 Neither Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action

- 52 Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex litigation including class action litigation. Lead Counsel Paul H. Halsey is experienced in complex racketeering and class litigation including several trials to verdict.
- 53 Counsel has the ability to advance the costs and expenses of the litigation.
- 54 To the extent the relief sought is not declaratory or injunctive, the amount in controversy exceeds one hundred dollars for each member of the Class.

Superiority

- 55 The maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class who would confront the party opposing the Class with incompatible standards of conduct, and adjudications with respect to individual Class Members would as a practical matter be dispositive of the interests of adjudications or would substantially impair or impede their ability to protect their interests. Final equitable and declaratory relief is appropriate with respect to the class. The action is manageable as a class. Individual claims of the separate class members might and could be prejudiced by the expense of multiple separate litigations and it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify class treatment.

IX. FACTS RELEVANT TO THE § 1964 CLAIMS

1 The Temporary Staffing Enterprise

- 56 At all relevant times an Enterprise existed within the meaning of 18 U.S.C. § 1961(4). This Enterprise was an entity that engaged in and the activities of which affected interstate and foreign commerce since it provided persons as temporary employees to various businesses that were engaged in and the activities of which affected interstate and foreign commerce including South Carolina area farms, hotels, restaurants, golf courses, construction companies, landscaping services, cleaning services, municipalities and other undisclosed businesses owned and/or operated by the Individual Defendants and their companies including but not limited to temporary staffing agencies, farms, landscaping services, cleaning services, car wash businesses, equipment rental companies, property management groups and transportation providers.
- 57 At all relevant times the Enterprise was an association-in-fact enterprise which is referred to herein as the Temporary Staffing Enterprise. The Individual Defendants owned companies that were members of the Enterprise and participated in the operation and management of these companies and themselves and through their companies participated in the management and operation of the Enterprise and conducted and participated in its affairs through their pattern of conduct unlawful under the 1970 Act, activity that included the execution of their Scheme to Cheat.

a Purpose of the Enterprise

58 At all relevant times the purposes of the Temporary Staffing Enterprise were to
(1) provide for the temporary staffing needs of local organizations and businesses
including those of Charleston County and (2) to make profits by engaging in
activities in connection with the provision of temporary workers to area
businesses

59 At all relevant times the legitimate purpose of the Temporary Staffing Enterprise
was to match temporary workers with area businesses for employment

60 At all relevant times the Individual Defendants utilized the Temporary Staffing
Enterprise to further their illegitimate purposes

- (a) to retain monies earned as wages by the Plaintiffs and Class Members
- (b) to increase their own profits and those of the Enterprise and
- (c) to manipulate reporting identification and requirements of governmental labor
and taxing authorities

61 The Plaintiffs and Class Members were the intended victims of this Scheme to
Cheat, and they were repeatedly cheated out of and had stolen their wages and
overtime earned through their employment by the Temporary Staffing Enterprise.

b Membership in the Temporary Staffing Enterprise

62 At all relevant times, the membership both willing and unwilling, of the
Temporary Staffing Enterprise included

- a the Individual Defendants,
- b the Defendants L&L Services LLC and WLL LLC and their affiliates,
- c the various yet unnamed Defendant John Doe individuals and

- d. the various yet unnamed Defendant A, B & C businesses including but not limited to temporary staffing agencies, farms, hotels, restaurants, golf courses, construction companies, landscaping services, cleaning services and municipalities.
- e. Elvira Luchke who is named as a participant but not as a defendant who was a supervisor employed by Individual Defendants and their Defendant companies and who assisted and facilitated the Defendants' Scheme to Cheat, including but not limited to threatening and extorting Plaintiffs in order to further the purposes of the Enterprise.
- f. Carlton Elliott who is named as a participant but not as a defendant who was a staffer employed by the Individual Defendants and their Defendant companies and who assisted and facilitated the Defendants' Scheme to Cheat, including but not limited to their falsification of government documents.
- g. other unnamed individuals, partnerships, corporations and associations including yet unnamed resident nationals of Mexico and Argentina and
- h. the Plaintiffs and Class Members who provided licit labor services incidental to Defendants' Scheme to Cheat and who were the Scheme's intended victims.

c. Structure of the Enterprise

- 6. At all relevant times the Temporary Staffing Scheme was an ongoing association-in-fact enterprise composed of entities and individuals with a common and shared purpose, a continuity of structure and personnel and a hierarchical decision

making structure that was used to both encourage and affect its legitimate purposes and to carry out the Scheme to Cheat. The roles that were performed by the various members of the Temporary Staffing Enterprise were:

- a. The members of the Temporary Staffing Enterprise with the exception of Plaintiffs and Class Members who formulated a broad plan to exploit the temporary labor market by attracting and/or providing a continuous demand for temporary labor employment. The plan included the employment of temporary laborers typically aliens from Latin American countries who were then effectively held in indentured servitude by a Scheme to Cheat by forced harboring, transportation, and threats of extortion.
- b. The Defendants and members of the Enterprise who concealed from labor insurance and taxing authorities the full nature and existence of their Employment Scheme to Cheat and the very existence of the Plaintiffs in this country, state, and country by manufacturing and providing false identification and immigration documents and reports including Social Security numbers, visas, and reports submitted to regulatory and taxing authorities.
- c. The Defendants and members of the Enterprise who concealed the true value of the wages earned by Plaintiffs and Class Members by dividing wages earned between the Defendants' companies such that the full amount of wages and/or overtime earned were never disclosed or paid to the Plaintiffs and Class Members.

- d The Defendants and members of the Enterprise who used and relied on the complexity of immigration regulations and law along with the bureaucracy of government regulatory schemes such as taxation Social Security and workers compensation to prey upon the Plaintiffs and Class Members in the Scheme to Cheat such that because of the methods used Defendants Scheme to Cheat was almost impossible for the relevant governmental authorities to uncover
- e The Defendants and members of the Enterprise who lured into trafficked into and harbored in South Carolina workers by the promise of legal and lawful employment
- f The Defendants and members of the Enterprise who as part of their pattern of conduct unlawful under the 1970 Act, manufactured and provided false identification documents to their workers so that they could then work as temporary laborers at various area businesses These workers including the Plaintiffs and Class Members, were transported by Defendants to prevent frolic and diversion on highways inter and intrastate in vehicles licensed and registered in North Carolina
- g The Defendants and members of the Enterprise who in furtherance of this pattern of conduct unlawful under the 1970 Act, used extortion and threats of retaliation by government authorities to keep Plaintiffs and Class Members as virtual slaves to this end Defendants harbored Plaintiffs in substandard housing, thus controlling how and where they lived

64 Through this pattern of conduct unlawful under the 1970 Act Defendants were able unlawfully to divert from Plaintiffs and Class Members and cheat them out of their lawful wages and on average

65 Upon information and belief Defendants (1) diverted these monies for their own personal use (2) laundered monies in North Carolina Argentina and other Latin American countries and (3) reinvested and used these monies in the maintenance and operation of the Enterprise with the result that the Plaintiffs and Class Members were injured in a perpetual cycle

66 The Individual Defendants played a central role in the management and operation of the Enterprise dictating its structure decisional process and organization All of the Individual Defendants participated in the operation of the Temporary Staffing Enterprise

d Distinction Between the Temporary Staffing Enterprise and Pattern of
Conduct Unlawful Under the 1970 Act

67 The Temporary Staffing Enterprise was separate and apart from the pattern of conduct unlawful under the 1970 Act because the Enterprise engaged in both legitimate and illegitimate activity and the members of the Enterprise included innocent parties including the Plaintiffs and Class Members

e Continuity of the Temporary Staffing Enterprise

68 The Temporary Staffing Enterprise was created no later than 1999, if not earlier upon the formation of Defendants L&L Services, LLC and WLL LLC by the Individual Defendants It continued at least until the filing of this lawsuit and thereafter for some period beyond It reflects continuity of structure and

personnel, since its original members including the Individual Defendants continued to be active in its management and control during its existence

1 Culpability of Members of the Enterprise

69 Some of the members of the Temporary Staffing Enterprise including each of the Defendants acted with culpability in their conduct of its affairs. Other members of the Temporary Staffing Enterprise were the unwitting instruments or victims of the culpable members of the Temporary Staffing Enterprise

2 Pattern of Conduct Unlawful Under the 1970 Act

70 Defendants engaged in a pattern of conduct unlawful under the 1970 Act consisting of predicate acts of

- a. harboring aliens in violation of Section 274 of the Immigration and Nationality Act (8 U.S.C. § 1328)
- b. false identification documents in violation of 18 U.S.C. §§ 2 and 1028
- c. false immigration documents in violation of 18 U.S.C. §§ 2 and 1546
- d. extortion in violation of 18 U.S.C. §§ 2, 1951 and 1961(1)(A) and S.C. Code Ann. § 16-17-640
- e. transportation of monies and property stolen or converted in violation of 18 U.S.C. §§ 2 and 2314 and
- f. money laundering in violation of 18 U.S.C. §§ 2, 1956 and 1957

a Scheme to Cheat

71 At all relevant times Defendants devised, intended to devise, and carried out a Scheme to Cheat out of and convert the property of the Plaintiffs including their wages and/or overtime. The Scheme to Cheat involved the use of material

misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive taxing, insurance and labor authorities. The Scheme to Cheat involved depriving the Plaintiffs and Class Members of their lawful entitlement to overtime. The Scheme to Cheat was inconsistent with moral uprightness, fundamental honesty and fair play and right dealing in the general business life of members of society. In executing or attempting to execute the Scheme to Cheat and to receive the financial benefits of the Scheme to Cheat Defendants repeatedly transported and caused to be transported money in excess of \$5,000 in interstate and foreign commerce.

72. From on or about 1999, the Plaintiffs and Class Members were paid less than the hours they earned by way of wages and/or overtime. Payments were facilitated through use of the mails and interstate wire communications and transportations. Every report transmitted by Defendants and members of the Enterprise that used the mails, interstate wires, and interstate or foreign transportations constituted separate executions of the Scheme to Cheat. Each report and payment accomplished the dual purposes of, first, making possible the retention of the fruits of the illegal Scheme to Cheat by the Defendants and second, concealing from the Plaintiffs and Class Members the true value of their services rendered and credits earned in federal and state insurance and taxing programs.

b. Harboring Aliens

73. In furtherance of the pattern of conduct unlawful under the 1970 Act and Scheme to Cheat, Defendants harbored aliens in violation of Section 274 of the Immigration and Nationality Act (8 U.S.C. § 1526). This harboring included

Defendants' pattern and practice of housing workers in substandard company-owned/leased residences

c. False Identification Documents

74 In furtherance of the pattern of conduct unlawful under the 1970 Act and the Scheme to Cheat, Defendants manufactured and issued to the Plaintiffs and Class Members false identification documents in violation of 18 U.S.C. §§ 2 and 1028. Defendants' violations of these provisions include but are not limited to their provision of false Social Security cards.

d. False Immigration Documents

75 In furtherance of the pattern of conduct unlawful under the 1970 Act and Scheme to Cheat, Defendants manufactured and issued to the Plaintiffs and Class Members false immigration documents in violation of 18 U.S.C. §§ 2 and 1546. Defendants' violations of these provisions include but are not limited to their provision of false Resident Alien cards.

e. Extortion

76 In furtherance of the pattern of conduct unlawful under the 1970 Act and Scheme to Cheat, Defendants used extortion and threats of violence or retaliation by government authorities to ensure that Plaintiffs were compelled to remain a part of their subterfuge. This control extends to transporting Plaintiffs to prevent their free movement and harboring Plaintiffs and Class Members in substandard lodgings in locations that required transportation by the Defendants to and from work in a continuous cycle, thereby violating 18 U.S.C. § 1951 and S.C. Code Ann. § 16-17-640.

f Transportation of Stolen Property or Monies

77 As alleged herein the Defendants throughout the course of the Scheme to Cheat failed to pay Plaintiffs and Class Members the fair value of their labor rendered and used by the Defendants in furtherance of the Temporary Staffing Enterprise. The Defendants created the supply and demand for the labor services of the Plaintiffs and Class Members and used these services for activities in the marketplace to the Defendants' financial benefit. The Defendants stole and converted for their own use the difference between the true value of the Plaintiffs and Class Members' labor services actually rendered and the amounts the Plaintiffs and Class Members were actually paid.

78 On numerous occasions, the Defendants transported and caused to be transported property or money belonging to Plaintiffs and Class Members knowing that it had been stolen or converted for the Defendants' own use and benefit with a value in excess of \$5,000.

g Money Laundering

79 Upon information and belief Defendants through their Enterprise took money gained by their Scheme to Cheat out of state and to Argentina and other Latin American countries where they diverted and laundered it.

h Pattern

80 The predicate acts constitute a pattern of conduct unlawful under the 1970 Act that is within 18 U.S.C. § 1961(5). Defendants' acts constituted a pattern since they reflected both relationship between the acts and continuity over the period of time of the acts. Relationship was reflected since the acts were connected to one

another as part of the Scheme to Cheat Community was reflected by both the repeated nature of the acts during the period of the Scheme to Cheat and the threat of similar acts occurring in the future. This threat was reflected by the continuing and ongoing nature of the acts.

i. Relatedness

- 81 The predicate acts were related, since they reflected the same purpose or goal (to retain wages and overtime pay of workers for the economic benefit of the Defendants and members of the Enterprise) results (retention of wages and overtime pay) participants (the Defendants and other members of the Enterprise) victims (the Plaintiffs and Class Members) and methods of commission (the Scheme to Cheat and the other acts described in the Complaint).
- 82 The predicate acts were otherwise interrelated by their distinguishing characteristics and were not isolated events, since they were carried out for the same purposes in a continuous manner throughout a substantial period of time.

3. General § 1964 Allegations

- 83 At all relevant times and in connection with the conduct giving rise to these claims for relief, the Defendants acted with malice, intent, knowledge, and in reckless disregard of the rights of the Plaintiffs and Class Members.

X CLAIMS FOR RELIEF

COUNT ONE

(Violation of § 1962(a))

- 84 The Plaintiffs and Class Members re-allege the preceding paragraphs

85 Each of the Plaintiffs and Class Members is a "person" under 18 U.S.C. §§ 1961(1) and 1964

86 Each Defendant was a person under 18 U.S.C. §§ 1961(1) and 1962(a)

87 The Temporary Staffing Enterprise was an enterprise under 18 U.S.C. §§ 1961(4) and 1962(a), which Enterprise was engaged in or the activities of which affected interstate and foreign commerce

88 Each Defendant received income from a pattern of conduct unlawful under the 1970 Act, that is under 18 U.S.C. § 1961(3) in which the Defendant participated as a principal and invested part of the income, or the proceeds from the income, in the acquisition, establishment, and operation of the Enterprise that is to wit multiple, repeated and continuous instances of

- a harboring aliens in violation of Section 274 of the Immigration and Nationality Act (8 U.S.C. § 1328)
- b false identification documents in violation of 18 U.S.C. §§ 2 and 1028
- c false immigration documents in violation of 18 U.S.C. §§ 2 and 1546
- d extortion in violation of 18 U.S.C. §§ 2, 1951 and 1961(1)(A) and S.C. Code Ann. § 16-17-640
- e transportation of monies and property stolen or converted in violation of 18 U.S.C. §§ 2 and 2314 and
- f money laundering in violation of 18 U.S.C. §§ 2, 1956 and 1957

89 The Plaintiffs and Class Members were injured in their business or property under 18 U.S.C. § 1964(c) by reason of the commission of the conduct unlawful under

the 1970 Act and the investment and use of income in the acquisition
establishment and operation of the Enterprise committed by the Defendants

COUNT TWO

(Conspiracy in Violation of § 1962(d) to Violate § 1962(a))

- 90 The Plaintiffs and Class Members re-allege the preceding paragraphs.
- 91 Each of the Plaintiffs and Class Members is a person under 18 U.S.C. §§
1961(3) and 1964
- 92 Each Defendant was a person under 18 U.S.C. §§ 1961(3) and 1962(a)
- 93 The Temporary Staffing Enterprise was an enterprise under 18 U.S.C. §§
1961(4) and 1962(a) which Enterprise was engaged in or the activities of which
affected interstate and foreign commerce
- 94 Each Defendant received income from a pattern of conduct unlawful under the
1970 Act that is under 18 U.S.C. § 1961(7) in which the Defendant participated
as a principal and invested part of the income, or the proceeds from the income in
the acquisition, establishment and operation of the Enterprise that is to wit
multiple repeated and continuous instances of
- a harboring aliens in violation of Section 274 of the Immigration and
Nationality Act (8 U.S.C. § 1328)
 - b false identification documents in violation of 18 U.S.C. §§ 2 and
1028
 - c false immigration documents in violation of 18 U.S.C. §§ 2 and
1546

d extortion in violation of 18 U.S.C. §§ 2 1951 and 1961(1)(A) and
S.C. Code Ann. § 16-17-640

e transportation of monies and property stolen or converted in
violation of 18 U.S.C. §§ 2 and 2314 and

f money laundering in violation of 18 U.S.C. §§ 2 1956 and 1957
in which the Defendants participated as a principal and invested
part of the income or the proceeds from the income in the
acquisition of the establishment of and the operation of the
Enterprise under 18 U.S.C. §§ 1962(a) and 1962(d)

95 The Plaintiffs and Class Members were injured in their business and property
under 18 U.S.C. § 1964(c) by reason of the commission of a pattern of conduct
unlawful under the 1970 Act that is under 18 U.S.C. § 1961(A) and (B) that were
overt acts in violation of 18 U.S.C. § 1962(d) and by the investment and use of
part of the income or the proceeds from the income in the acquisition of the
establishment of and the operation of the Enterprise under 18 U.S.C. §§ 1962(a)
and 1962(d) committed by the Defendants

COUNT THREE

(Violation of § 1962(c))

96 The Plaintiffs and Class Members re-allege the preceding paragraphs

97 Each of the Plaintiffs and Class Members is a person under 18 U.S.C. §§
1961(3) and 1964

98 Each Defendant was a person under 18 U.S.C. §§ 1961(3) and 1962(a)

99 The Temporary Staffing Enterprise was an enterprise under 18 U.S.C. §§ 1961(4) and 1962(a) which was engaged in or the activities of which affected interstate and foreign commerce

100 Each Defendant received income from a pattern of conduct unlawful under the 1970 Act that is, under 18 U.S.C. § 1961(5) in which Defendants participated as principals and invested part of the income, or the proceeds from the income, in the acquisition in the establishment and the operation of the Enterprise that is to wit multiple repeated and continuous instances of

- a harboring aliens in violation of Section 724 of the Immigration and Nationality Act (8 U.S.C. § 1328)
- b false identification documents in violation of 18 U.S.C. §§ 2 and 1025
- c false immigration documents in violation of 18 U.S.C. §§ 2 and 1446
- d extortion in violation of 18 U.S.C. §§ 2, 1961 and 1961(1)(A) and S.C. Code Ann. § 16-17-640
- e transportation of monies and property stolen or converted in violation of 18 U.S.C. §§ 2 and 2314 and
- f money laundering in violation of 18 U.S.C. §§ 2, 1956 and 1957 in which the Defendants participated as a principal and invested part of the income or the proceeds from the income in the acquisition of the establishment

of and the operation of the Temporary Staffing

Enterprise under 18 U S C §§ 1962(a) and 1962(d)

101 The Plaintiffs and Class Members were injured in their business and
property under 18 U S C § 1964(c) by reason of the commission of the conduct
unlawful under the 1970 Act that is under 18 U S C §§ 1961(A) and (B)
1961(c) and 1962(c)

COUNT FOUR

(Conspiracy in Violation of § 1962(d) to Violate § 1962(c))

102 The Plaintiffs and Class Members re-allege the preceding paragraphs

103 Each of the Plaintiffs and Class Members is a person under 18 U S C §§
1961(c) and 1964

104 Each Defendant was a person under 18 U S C §§ 1961(c) and 1962(a)

105 The Temporary Staffing Enterprise was an enterprise under 18 U S C
§§ 1961(4) and 1962(a) which was engaged in or the activities of which affected
interstate and foreign commerce

106 Each Defendant received income from a pattern of conduct unlawful under
the 1970 Act that is, under 18 U S C § 1961(c) in which the Defendants
participated as principals and invested part of the income, or the proceeds from
the income, in the acquisition in the establishment and the operation of the
Enterprise that is to wit multiple repeated and continuous instances of

a harboring aliens in violation of Section 724 of the Immigration and
Nationality Act (8 U S C § 1328)

- b false identification documents in violation of 18 U S C §§ 2 and 1028,
- c false immigration documents in violation of 18 U S C §§ 2 and 1546
- d extortion in violation of 18 U S C §§ 2 1961 and 1961(1)(A) and S C Code Ann. § 16 17-640
- e transportation of monies and property stolen or converted in violation of 18 U S C §§ 2 and 2314 and
- f money laundering in violation of 18 U S C §§ 2 1966 and 1967

107 The Plaintiffs and Class Members were injured in their business and property under 18 U S C § 1964(c) by reason of the commission of conduct unlawful under the 1970 Act that is under 18 U S C § 1961(A) and (B) that were overt acts in violation of 18 U S C § 1962(d) committed by the Defendants

COUNT FIVE

(Violations of the Fair Labor Standards Act)

108 The Plaintiffs and Class Members re allege each of the preceding allegations

109 The Fair Labor Standards Act (FLSA) 29 U S C § 207 et seq provides a cause of action to recover overtime wages not paid

110 Defendants bad faith conduct as described herein entitles Plaintiffs to an additional equal amount of lost wages in liquidated damages attorney fees and costs.

111 The Plaintiffs and Class Members satisfy standing requirements insofar as they have handled or otherwise worked on goods or materials that have been moved in interstate commerce and whose gross sales volume exceeds \$500,000.

COUNT SIX

(Violations of the Payment of Wages Act)

112 The Plaintiffs and Class Members re-allege each of the preceding allegations.

113 The Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to -110 provides that an employer shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law, or the employer has given written notification to the employee of the amount and terms of the deductions.

114 As detailed herein, Defendants have unlawfully withheld wages without legal justification.

115 As a result of Defendants' statutory violations, Plaintiffs and Class Members are entitled to treble damages in the amount of three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees.

COUNT SEVEN

(Breach of Contract)

116 The Plaintiffs and Class Members re-allege each of the preceding allegations.

117 The Defendants and their agents, by their acts and omissions, described herein, breached their contractual obligations which were owed to the Plaintiffs.

and Class Members including but not limited to failing to pay Plaintiffs and Class Members their wages and/or overtime earned in exchange for services provided

118 Plaintiffs and Class Members have been damaged by Defendants' breach of contract and Defendants and their agents have illegally profited from this breach

119 Plaintiffs and Class Members are entitled to actual damages as a result of this breach

COUNT EIGHT

(Unjust Enrichment, Restitution and Disgorgement of Illegal Profits)

120 The Plaintiffs and Class Members re-allege each of the preceding allegations

121 The Defendants and their agents have been unjustly enriched by reaping the benefits of their deception by failing to pay wages and/or overtime earned

122 Based upon the practices alleged hereinabove the Defendants intended to and did fail to account for and pay wages and/or overtime to Plaintiffs and Class Members in exchange for services they provided

123 The Defendants intended to retain and did retain monies not paid to Plaintiffs and Class Members for work they provided to the detriment of the Plaintiffs and Class Members

124 The Defendants manipulated their internal wage accounting process for their benefit and to the detriment of the Plaintiffs and Class Members

125 The Defendants have therefore been unjustly enriched. The Plaintiffs and
Class Members are entitled to appropriate equitable relief to recover the amounts
by which the Defendants have been unjustly enriched as a result of said conduct,
together with pre judgment interest along with restitution of unlawfully obtained
monies and disgorgement of all profits and ill gotten gains thus realized.

COUNT NINE

(Civil Conspiracy)

126 The Plaintiffs and Class Members re-allege each of the preceding
allegations.

127 Defendants in concert with their agents in South Carolina did purposely
harm and injure the Plaintiffs and Class Members.

128 Individual and Corporate Defendants acted together as agents for the
other individually and in concert to the detriment of Plaintiffs and Class
Members.

129 Defendants and their agents with full knowledge of the prohibitions
against their practices in the State of South Carolina and despite that knowledge
continued their illegal practices to the detriment of the Plaintiffs and Class
Members.

130 Defendants and their agents in South Carolina, sought to damage
Plaintiffs and the Class Members by failing to pay money for work that was
performed on Defendants' behalf.

131 That Defendants, and their agents in South Carolina caused the Plaintiffs
and Class Members special damage as a result of their civil conspiracy for failing
to pay for services performed on Defendants behalf

132 That Plaintiffs and Class Members have suffered damages as a result of
the civil conspiracy of Defendants and their agents, and are entitled to receive
actual and punitive damages together with costs

COUNT TEN

(Accounting)

133 Plaintiffs and Class Members re-allege each of the preceding allegations

134 Plaintiffs and Class Members request this Court require the Defendants to
provide an accounting for all sums they illegally and improperly retained from the
Plaintiffs and Class Members out of the practices alleged herein and to determine
all wages and benefits the Plaintiffs and Class Members would have been entitled
to receive had the Defendants conduct been lawful, and to determine which
Defendants named or unnamed may be responsible

XI DEMAND FOR JURY TRIAL

135 Plaintiffs demand a trial by jury on behalf of themselves and the Class
Members

XII PRAYER FOR RELIEF

WHEREFORE the Plaintiffs on behalf of themselves and the Class Members pray
for judgment jointly and severally against the Defendants as follows

- a Awarding the Plaintiff and Class Members actual and treble damages, punitive damages where appropriate and pre- and post-judgment interest as a result of the wrongful conduct complained of herein
- b Awarding comprehensive injunctive relief as provided by federal or other law prohibiting Defendant from continuing to engage in the illegal practices described herein
- c Awarding the Plaintiff and Class Members their costs and expenses in this litigation, including reasonable attorneys' fees and expert fees
- d Requiring the Defendants to provide an accounting to the Plaintiffs and Class Members and to restore all money taken from them and to disgorge all profits illegally obtained and for which they were unjustly enriched and to provide a mechanism for identifying and notifying all Class Members and a mechanism for the fair and equitable distribution of damages to the Class Members
- e Awarding the Plaintiff and Class Members such other and further relief as may be just and proper



HULSEY LITIGATION GROUP LLC
Paul H. Hulsey, D.S.C. Bar No. 9325
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ATTORNEYS FOR THE PLAINTIFFS
AND CLASS MEMBERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of March, 2005 a true copy of
Plaintiff's Second Amended Complaint sent by U S mail to

John A. Massalon, Esq. Walls & Massalon, LLC Attorney for Defendants Lawton
Limehouse Sr Lawton Limehouse Jr L&L Services LLC and WALL LLC 134
Meeting Street, Suite 100 Charleston South Carolina 29401 Tel (843) 727 1144 Fax
(843) 727 7696

By 

#45 ORIGINAL FILED

NOV 15 2004

LARRY W. PROPER, CLERK
CHARLESTON, SC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action No. 2 04 1295 12

Maximmo Flores, Mateo Alvarez Manuel
Ramirez, José Luis Jimenez, Maximma Flores
Macrmo Flores Alejandro Hernandez Hugo Jean Gerard
Fidel Cruz Delgado Angel Chuma Valentin, Luis Alberto
Chuma Valentin Jose Antonio Cruz, Esperanza Oralle
Isaías Flores Lagunes and Others Similarly Situated,

Plaintiffs

vs.

RICO CASE STATEMENT

Lawton Limehouse, Sr, Lawton Limehouse, Jr,
L&L Services LLC, WLL, LLC, unknown
John Doe individuals and unknown businesses,
including, but not limited to A, B & C temporary
staffing agencies, farms, hotels, restaurants, golf
courses construction companies, landscaping
services, cleaning services municipalities and
other undiscovered businesses owned by or
affiliated with Defendants

Defendants

HULSEY LITIGATION GROUP LLC
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Marco T Torres, D S C Bar No 9336
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Of Counsel
G Robert Blakey
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* For purposes of identification only

ATTORNEYS FOR PLAINTIFFS AND CLASS MEMBERS

TO THE HONORABLE COURT

COME NOW Plaintiffs, through their undersigned attorneys and submit the following Preliminary RICO Case Statement

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. § 1962(a), (b), (c), and/or (d)

ANSWER. Plaintiffs First Amended Complaint alleges violations of 18 U.S.C. § 1962(a), (c) and (d). Plaintiffs First Amended Complaint does not allege violations of 18 U.S.C. § 1962(b).

2. List all defendants and state the alleged misconduct and basis of liability of each defendant

ANSWER. As to each Individual Defendant, the alleged misconduct and basis of liability arise out of their employee abuses, through violations of P.L. 91-452 § 4 Stat. 922, 941 (1970) (hereinafter 1970 Act), 18 U.S.C. §§ 1961 to 1968, as well as violations of other federal and state laws as detailed below. The Defendants' acts and omissions include but are not limited to an unlawful scheme to cheat, steal, and convert (hereinafter Scheme to Cheat) the money and property of the Plaintiffs and Class Members who provided labor services in exchange for wages. This Scheme to Cheat the Plaintiffs and Class Members for the economic benefit of the Defendants involves, among other crimes, harboring aliens, producing false identification documents and false immigrant documents, federal and state extortion, and the transportation of property stolen or converted, and money laundering. As to Defendants denominated "John Doe," they either knowingly or willfully and recklessly turned a blind eye to the impropriety and illegality of the conduct of the Individual Defendants and either aided and abetted, conspired, or participated in their Scheme to Cheat by providing a continuous demand for temporary staffing.

3. List all alleged wrongdoers, other than any defendants listed above, and state the alleged misconduct of each wrongdoer

ANSWER. Alleged wrongdoers other than the Defendants listed above, include:

- Elvira Luebke. Ms. Luebke was a supervisor employed by Individual Defendants and their Defendant Companies, who assisted and facilitated the Defendants' Scheme to Cheat, including, but not limited to, threatening and extorting Plaintiffs in order to further the purposes of the Enterprise.

- *Carlton Elliott* Mr. Elliott was a staffer employed by the Individual Defendants and their Defendant Companies, and who assisted and facilitated the Defendants' Scheme to Cheat, including, but not limited to, their falsification of government documents
- *Other unnamed individuals, partnerships, corporations, and associations including yet unnamed resident nationals of Mexico and Argentina* These individuals and/or entities assisted and facilitated the Defendants' Scheme to Cheat by diverting, laundering, reinvesting, and converting monies of the Plaintiffs and Class Members, and by assisting the Defendants in their maintenance of a continuous temporary labor supply

4 List the alleged victims and state how each victim was allegedly injured

ANSWER. The alleged victims include the Representative Plaintiffs and Class Members. As to the Representative Plaintiffs, they include Maximino Flores, Mateo Alvarez, Manuel Ramirez, Jose Luis Jimenez, Maximina Flores, Macrino Flores, Alejandro Hernandez, Hugo Jean Gerard, Fidel Cruz Delgado, Angel Chuma Valentin, Luis Alberto Chuma Valentin, Jose Antonio Cruz Esperanza Oralle, Isaias Flores Lagunes. Class Members are similarly situated. All of the individuals suffered the same or substantially similar injuries. The injuries include, but are not limited to denial of their full, fair, and lawful compensation for their labor.

5 Describe in detail the pattern of racketeering activities or collection of unlawful debts alleged for each RICO claim. The description of the pattern of racketeering shall include the following information:

- a. List the alleged predicate acts and the specific statutes that were allegedly violated.

ANSWER. Defendants engaged in a pattern of conduct unlawful under the 1970 Act consisting of predicate acts of:

- harboring aliens in violation of Section 274 of the Immigration and Nationality Act (8 U.S.C. § 1328),
- production of false identification documents in violation of 18 U.S.C. §§ 2 and 1028,
- production of false immigration documents in violation of 18 U.S.C. §§ 2 and 1546,
- extortion in violation of 18 U.S.C. §§ 2, 1951 and 1961(1)(A)
- 18 U.S.C. Code Ann. § 16-17-540 transportation of monies and property stolen or converted in violation of 18 U.S.C. §§ 2 and 2314, and

- • money laundering in violation of 18 U.S.C. §§ 2, 1956, and 1957

- b Provide the date of each predicate act, the participants in each predicate act, and a description of the facts constituting each predicate act

ANSWER The Enterprise was formed no later than 1999, if not earlier, and continued in existence through the date of the filing of the Complaint. The Scheme to Cheat was formed on or before 1999 if not earlier, and continued in existence through the date of the filing of this Complaint. The pattern of conduct unlawful under the 1970 Act is virtually coterminous with the Scheme to Cheat and the Enterprise.

- c If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity" Fed. R. Civ. P. 9(b). Identify the time, place, and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made.

ANSWER Not applicable.

- d State whether there has been a criminal conviction for violation of any predicate act

ANSWER. Plaintiffs have no knowledge of any criminal convictions related to the predicate acts. Defendants are, however, the subject of several separate investigations by the U.S. Postal Office, the U.S. Department of Labor, U.S. Attorney's Office, and the South Carolina Workers' Compensation Commission.

- e State whether civil litigation has resulted in a judgment with regard to any predicate act.

ANSWER. Plaintiffs have no knowledge of any civil judgments related to the predicate acts.

- f Describe how the predicate acts form a "pattern of racketeering activity"

ANSWER. The predicate acts constituted a "pattern," because they reflected both relationship between the acts and continuity over the period of time of the acts. Relationship was reflected, since the acts were connected to one another as part of the Scheme to Cheat. Continuity was reflected by both the repeated nature of the acts during the period of the

Scheme to Cheat, and the threat of similar acts occurring in the future. This threat was reflected by the continuing and ongoing nature of the acts

- g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe the alleged relationship and common plan in detail

ANSWER. Yes. Within the Scheme to Cheat, the predicate acts are related in the sense that they have the same purpose or goal (to exploit the temporary labor market by attracting and/or providing a continuous demand for temporary labor employment, including the employment of temporary laborers, typically persons of Latin American descent, who were then effectively held in indentured servitude by a Scheme to Cheat by forced harboring, transportation, and threats of extortion results (the continued employment and exploitation of temporary workers including the withholding of near wages and/or overtime) victims (the Plaintiffs and other members of the Class) and methods of commission (the Scheme to Cheat and the predicate acts described above)

6. Describe in detail the alleged "enterprise" for each RICO claim. A description of the enterprise shall include the following:

The Enterprise for each RICO claim is the same. Therefore the information provided below applies to all claims.

- a. the names of the individuals, partnerships, corporations, associations, or other legal entities which allegedly constitute the enterprise

ANSWER. In addition to the unwitting Plaintiffs and Class Members the members of the Enterprise included all of the Defendants

- Lawton Limchouse, Sr
- Lawton Limchouse, Jr
- L&L Services, LLC;
- WLL, LLC
- Unknown John Doe individuals and
- Unknown businesses including, but not limited to A B & C temporary staffing agencies, farms, hotels, restaurants, golf courses, construction companies, landscaping services, cleaning services, municipalities, and other undiscovered businesses owned by or affiliated with Defendants.
- Elvira Lueble. Ms. Lueble was a supervisor employed by Individual Defendants and their Defendant Companies and who assisted and facilitated the Defendants' Scheme to Cheat, including but not limited to, threatening and extorting Plaintiffs in order to further the purposes of the Enterprise.

- Carlton Elhott: Mr. Elhott was a staffer employed by the Individual Defendants and their Defendant Companies and who assisted and facilitated the Defendants' Scheme to Cheat including, but not limited to their falsification of government documents
 - Other unnamed individuals, partnerships, corporations, and associations including yet unnamed resident nationals of Mexico and Argentina. These individuals and/or entities assisted and facilitated the Defendants' Scheme to Cheat by diverting, laundering, reinvesting, and using the monies of the Plaintiffs and Class Members converted by the Individual Defendants
- b. a description of the structure, purpose, function, and course of conduct of the enterprise

ANSWER. At all relevant times an 'Enterprise' existed within the meaning of 18 U.S.C. § 1961(4). This 'Enterprise' was an entity that engaged in, and whose activities affected interstate and foreign commerce since it provided persons as temporary employees to various businesses that were engaged in and the activities of which affected interstate and foreign commerce, including South Carolina area farms, hotels, restaurants, golf courses, construction companies, landscaping services, cleaning services, municipalities and other undiscovered businesses owned and/or operated by the Individual Defendants and their companies including, but not limited to temporary staffing agencies, farms, landscaping services, cleaning services, car wash businesses, equipment rental companies, property management groups and transportation providers. In addition, at all relevant times, the Enterprise was an association in-fact enterprise, which is referred to herein as the "Temporary Staffing Enterprise." The Individual Defendants owned companies that were members of the Enterprise and participated in the operation and management of these companies and themselves, and through their companies participated in the management and operation of the Enterprise and conducted and participated in its affairs through their pattern of conduct unlawful under the 1970 Act, activity that included the execution of their Scheme to Cheat.

- c. a statement of whether any defendant is any employee, officer, or director of the alleged enterprise

ANSWER. Defendants Lawton Limehouse, Sr. and Lawton Limehouse, Jr. are employees, officers and/or directors of the companies that were part of the Enterprise.

- d. a statement of whether any defendant is associated with the alleged enterprise

ANSWER. Defendants Lawton Limehouse, Sr. and Lawton Limehouse, Jr. are employees, officers, and/or directors of the companies that were part of the Enterprise, therefore, they are associated with the Enterprise.

- e. a statement of whether plaintiff is alleging that any defendant is an individual or entity separate from the alleged enterprise or that any defendant is the enterprise itself, or a member of the enterprise.

ANSWER. Plaintiffs allege that the Defendants are members of the Enterprise.

- f. If any defendant is alleged to be the enterprise itself, or a member of the enterprise, an explanation of whether such defendant is a perpetrator, a passive instrument, or a victim of the alleged racketeering activity.

ANSWER. Plaintiffs allege that the Defendants are perpetrators.

7. State and describe in detail whether plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

ANSWER. The pattern of racketeering activity and the enterprise are separate; they have not merged into one entity. The association-in-fact Enterprise is an entity separate and distinct from its membership. The liable persons are the members of the association in fact Enterprise, among which are the Defendants. In addition, the members of the Enterprise included innocent parties, including the Plaintiffs and Class Members.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual daily activities of the enterprise, if at all.

ANSWER. The daily activities of the Enterprise—temporary staffing services—are legal. They include temporary staffing services and other licit businesses including, but not limited to, farms, hotels, restaurants, golf courses, construction companies, landscaping services, cleaning services, municipalities, and other undiscovered businesses owned by or affiliated with Defendants. The racketeering activity differs from the usual daily activities of the enterprise in that the racketeering activity is illegal and includes employee abuses, through violations of P.L. 91-452, 84 Stat. 922, 941 (1970) (hereinafter 1970 Act), 18 U.S.C. §§ 1961 to 1968, as well as violations of other federal and state laws as detailed below. The Defendants' acts and omissions include, but are not limited to, an unlawful scheme to cheat, steal and convert (hereinafter Scheme to Cheat) the money and property of the Plaintiffs and Class Members who provided labor services in exchange for

wages. This Scheme to Cheat the Plaintiffs and Class Members for the economic benefit of the Defendants involves, among other crimes harboring aliens, production of false identification documents and false immigration documents, federal and state extortion, and the transportation of property stolen or converted, and money laundering.

- 9 Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

ANSWER. Monies of the Plaintiffs and Class Members including a direct increase in Defendants' revenues and profits arising out of their failure to pay wages, overtime, insurance benefits, and taxes on their behalf, which in turn allowed them to invest part of these revenues or profits in the acquisition in, the establishment of, and the operation of the Enterprise.

- 10 Describe the effect of the activities of the enterprise on interstate or foreign commerce.

ANSWER. The Defendants throughout the course of the Scheme to Cheat failed to pay Plaintiffs and Class Members the fair value of their labor services rendered and used by the Defendants in furtherance of the Temporary Staffing Enterprise. The Defendants created the supply and demand for the labor services of the Plaintiffs and Class Members, lured and trafficked temporary workers into South Carolina, and used their labor services for activities in the marketplace for the Defendants' financial benefit. Indeed, the Defendants were engaged in interstate commerce by the very nature of the services they rendered. The Defendants stole and converted for their own use the difference between the true value of the Plaintiffs and Class Members labor services actually rendered and the amounts the Plaintiffs and Class Members were actually paid. On numerous occasions, the Defendants transported and caused to be transported property or money belonging to Plaintiffs and Class Members, knowing that it had been stolen or converted for the Defendants' own use and benefit, with a value in excess of \$5,000. In addition, the Defendants and members of the Enterprise concealed from labor, insurance, and taxing authorities the full nature and existence of their Scheme to Cheat and the very existence of the Plaintiffs in this county, state, and country by manufacturing and providing false identification and immigration documents and reports including Social Security numbers, visas, and reports submitted to regulatory and taxing authorities.

11. If the complaint alleges a violation of 18 U.S.C. § 1962(a)-

- a State who received the income derived from the pattern of racketeering activity or through the collection of unlawful debt.

ANSWER. The individual Defendants (Lawton Lunchhouse, Sr. and Lawton Lunchhouse, Sr.) and their Defendant companies, L&L Services, LLC and WILL LLC received the income derived from the pattern of racketeering activity.

b. Describe the use or investment of such income.

ANSWER. Each Defendant received income from a pattern of conduct unlawful under the 1970 Act, that is, under 18 U.S.C. § 1961(5), in which the Defendants participated as principals and invested part of the income, or the proceeds from the income, in the acquisition, establishment, and operation of the Enterprise.

12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

ANSWER. Not applicable.

13. If the complaint alleges a violation of 18 U.S.C. § 1962(c)

a. State who is employed by or associated with the alleged enterprise.

ANSWER. See Answer to No. 6 a. above.

b. State whether the same entity is both the liable 'person' and the 'enterprise' under § 1962(c).

ANSWER. No.

14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the facts showing the existence of the alleged conspiracy.

ANSWER. By their nature, the racketeering activities of Defendants—which included harboring aliens, withholding wages and overtime, providing false documents, assigning false Social Security numbers to temporary workers, providing false Social Security numbers to various taxing authorities, extortion, money laundering, and transportation of money interstate—preclude any inference of accidental association, but rather required the Defendants' mutual cooperation, acquiescence, knowledge, and scienter.

15. Describe the alleged injury to business or property.

ANSWER. Plaintiffs and Class Members did not receive their lawfully earned wages and/or overtime, workers compensation insurance to which they were entitled by law and/or Social Security credits for wages earned.

- 16 Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

ANSWER. But for the Scheme to Cheat, the Plaintiffs and Class Members would not have been cheated out of their wages and/or overtime extorted, issued false documents, and denied insurance and tax credits. Thus the Scheme to Cheat was the direct cause of the injuries Plaintiffs and Class Members have suffered.

- 17 List the damages sustained by reason of the violation of 18 U.S.C. § 1962, indicating the amount for which each defendant is allegedly liable.

ANSWER. The exact amount of the damages has not yet been determined. Discovery is ongoing and Plaintiffs reserve the right to supplement this Answer. Damages include, but are not limited to the wages and/or overtime withheld unlawfully by Defendants, as well as the loss of insurance and tax credits to which Plaintiffs and Class Members were entitled to receive by law. Defendants are jointly and severally liable to Plaintiffs for these damages.

- 18 List all other federal causes of action, if any, and provide the relevant statute numbers.

ANSWER.

- Fair Labor Standards Act (FLSA) 29 U.S.C. § 207 et seq.
- Hobbs Act 18 U.S.C. §§ 2, 1951, and 1961(1)(A) (extortion)

- 19 List all state claims in the case pursuant to supplemental jurisdiction, if any.

ANSWER.

- Payment of Wages Act, S.C. Code Ann. § 16-17-640 (extortion)
- Breach of Contract
- Unjust Enrichment
- Restitution
- Disgorgement of Illegal Profits

- 20 Provide a brief outline of any additional information that you feel would be helpful to the court in processing your RICO claims.

ANSWER.

A. Factual Summary

The class action Complaint on which this RICO Case Statement is based arises out of the employee abuses by Defendant Lawton Lunehouse, Sr. Defendant Lawton Lunehouse Jr., Defendants L&L Services, LLC and WLL LLC and other John Doe and A B & C Defendants, as well through violations of P.L. 91-452 84 Stat. 922 941 (1970) (hereinafter 1970 Act) 18 U.S.C. §s 1961 to 1968 as well as violations of other federal and state laws as detailed below. This Complaint is brought by the Plaintiffs on their behalf and for all others similarly situated to vindicate their rights and the rights of a class of similarly situated persons (hereinafter Class Members) to receive full fair and lawful compensation for their labor. The Defendants' acts and omissions include, but are not limited to, an unlawful scheme to cheat, steal and convert (hereinafter Scheme to Cheat) the money and property of the Plaintiffs and Class Members who provided labor services in exchange for wages. This Scheme to Cheat the Plaintiffs for the economic benefit of the Defendants involves among other crimes harboring aliases false identification documents, false migrant documents, federal and state extortion, and the transportation of property stolen or converted, and money laundering.

As part of the Scheme to Cheat, the Plaintiffs and Class Members in this action were hired by the Defendants, for which they worked at various area businesses as temporary employees. The businesses that hired employees from Defendants Enterprise paid salaries and wages directly to the Individual Defendants. The businesses benefited by not paying wages or benefits, such as health or workers compensation insurance. The Individual Defendants, in turn, took at least \$4.00 per hour from each of their employees wages and then issue a paycheck to the employees from their own payroll. Although deductions were taken from each employee for Social Security and Medicare, the Plaintiffs and all others similarly situated were deprived of the benefit of those deductions through Defendants' Scheme to Cheat by reporting false Social Security and other identification numbers. Plaintiffs thus earned, but did not accrue, the benefits intended by Social Security and Medicare laws.

Each week, the Defendants' managers told the employees at which area businesses they needed to report for work. The Defendants provided vans to shuttle the employees back and forth from the substandard company-owned/leased residences where the majority of the company employees were harbored, to the various work sites. The housing the Individual Defendants provided was substandard and yet the workers were charged for it. Often, ten to thirty, and sometimes more employees were crowded into the homes. Many of the homes used by Defendants to harbor their employees were deemed uninhabitable by city inspectors but Defendants still deducted rent from Employees' pay checks.

The Plaintiffs and Class Members allege that Defendants developed a Scheme to Cheat whereby they would illegally willfully and consistently withhold portions of their employees' wages without any justification or right under state or federal law. For example, employees would work a forty (40) hour work week and would be compensated for either thirty-five (35) or thirty-seven (37) hours without written or verbal notification of said deductions or justification for said deductions.

Also the Plaintiffs and Class Members allege Defendants developed a Scheme to Cheat whereby they would illegally, willfully and consistently fail to compensate their employees at the rate of one half times the regular rate for hours worked in excess of forty (40) hours a week. For example Plaintiffs and Class Members would often work sixty (60) to seventy (70) hours a week and received no overtime pay.

In order to circumvent the federal overtime requirements, Defendants would divide the hours employees worked between two companies so that an employee who worked over forty (40) hours would receive two checks, one issued by L&L Services and another from WLL LLC. The employee was thereby denied the federally mandated time and half compensation for his/her hours worked over forty (40) in a week. Although the Lighthouse Defendants set up two companies, they were for all intents and purposes one and the same company.

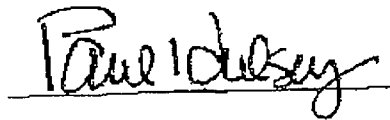
In addition to dividing the hours employees worked between two companies (L&L Services and WLL, LLC) to circumvent federal overtime wage requirements, Defendants would also routinely issue pay checks to employees that reflected over forty (40) hours a week but were compensated at the same pay rate for all of the hours with no explanation as to why they were denied overtime pay. Plaintiffs and Class Members allege Defendants manufactured and provided Plaintiffs and Class Members false Resident Alien cards and Social Security cards.

B U.S. Department of Labor Investigation

The US Department of Labor conducted an investigation of the Defendants pursuant to the Fair Labor Standards Act (FLSA). The scope of the investigation covered May 1, 2002 to April 12, 2004. The instant lawsuit alleges FLSA violations as early as 1993 to present. See Exhibit A (attached letters).

The investigation determined that Defendants' employees were subject to the requirements of the FLSA. The Department disclosed that Defendants violated Section 6 of the FLSA by failing to pay employees the applicable minimum wage and/or Section 7 of the FLSA by failing to pay overtime. The Department assessed fines against Defendants resulting from underpayments totaling \$66,485.36, based on a figure of 223 employees. None of the Class Representatives in the instant lawsuit have received any settlement amounts assessed against Defendants by the Department of Labor.

Respectfully submitted this 15th day of November 2004, by



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ATTORNEYS FOR THE PLAINTIFFS
AND CLASS MEMBERS

EXHIBIT A

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Columbia District Office
Federal Building
1835 Assembly Street
Room 1072
Columbia, SC 29201
603-767-5832
Fax 803-253-3063



Jun. 29 2004

William Lunenhouse Sr.
L & L Services
2313 Ashley River Road
Charleston, SC 29414

Subject: FLSA Minimum Wage/Overtime Violations of L & L Services Inc. d/b/a L & L Services
and William Lunenhouse Sr. an individual

File Number 13464-6

Dear Mr. Lunenhouse:

The recent investigation of your firm conducted by Investigator Jusino under the Fair Labor Standards Act (FLSA) covered the period 05/01/2002 to 04/12/2004. The investigation disclosed that your employees are subject to the requirements of the FLSA.

The investigation disclosed violations of FLSA section 6 resulting from the failure to pay employees at least the applicable minimum wage for all hours worked and/or FLSA section 7 resulting from the failure to pay statutory overtime pay for hours worked in excess of 40 hours per week. These violations resulted in underpayments totaling \$65,485.36 due to two hundred and twenty-three (223) employees.

Investigator Jusino has advised me that you have agreed to comply fully with all provisions of the FLSA in the future and that you have paid the above-assessed back wages in full by 06/01/2004.

We would like to direct your attention to section 16(e) of the FLSA and Regulations, Part 578. As you will note, section 16(e) provides for the assessment of a civil money penalty for any repeated or willful violations of section 6 or 7 in an amount not to exceed \$1,100 for each such violation. No penalty is being assessed as a result of this investigation. If at any time in the future your firm is found to have violated the monetary provisions of the FLSA, it will be subject to such penalties.

Copies of the FLSA Regulation, 578 and a Handy Reference Guide are enclosed for your reference. If you have any questions about the investigation or about any aspect of the FLSA, please do not hesitate to contact me or Investigator Jusino.

Sincerely,

/s/

Scott K. Pear

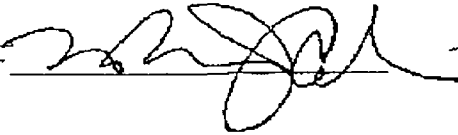
00197

CERTIFICATE OF SERVICE

I, William J Cook, HEREBY CERTIFY that on the 15th day of November 2004 a true copy of this Plaintiffs' Answers to Defendants First Set of Requests for Production to Plaintiffs were sent by U.S. mail to

John A. Massalon, Esq. Wills & Massalon, LLC, Attorney for Defendants Lawton
Limehouse, Sr., Lawton Limehouse, Jr. L&L Services LLC and WLL LLC 134
Meeting Street, Suite 100 Charleston, South Carolina 29401 Tel. (843) 727-1144 Fax
(843) 727 7696

By



**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Maximino Flores, Maximina Flores, and)
Isaias Flores Lagunes,)
Individually and on Behalf of Others)
Similarly Situated,)

Plaintiffs,)

vs)

Lawton Limehouse, Sr, *et al*,)

Defendants)

Civil Action No 2 04-1295-CWH

ORDER

The plaintiffs are former employees of L&L Services LLC ("L&L") and WLL, LLC ("WLL") which were owned and operated by Lawton Limehouse Sr and Lawton Limehouse Jr. L&L and WLL provided temporary labor to other businesses.

The plaintiffs allege that to obtain cheap labor the defendants hired unauthorized aliens and then exploited them under the threat of deportation. In the third amended complaint the plaintiffs raise the following causes of action:

- 1 Violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO")
- 2 Violation of the Fair Labor Standards Act ("FLSA")
- 3 Violation of South Carolina's Payment of Wages Act
- 4 Breach of contract
- 5 Unjust enrichment and disgorgement of profits
- 6 Civil Conspiracy
- 7 Accounting

The plaintiffs have withdrawn the civil conspiracy claim. On July 22, 2005, the defendants filed a motion for summary judgment in favor of dismissing the action. The defendants also filed a motion to dismiss Maximino Flores, Maximina Flores, and Isaias Flores Lagunes for failing to answer questions relating to their immigration status. On August 12, 2005 the plaintiffs



responded to the motion for summary judgment. On October 6, 2005, the Court heard the pending motions. At the hearing, the Court advised the plaintiffs that the defendants needed answers to questions regarding the plaintiffs' immigration status and directed the defendants to file a supplemental brief listing the questions that the plaintiffs refused to answer. On October 21, 2005, the defendants filed the list.

On January 26, 2006, the Court ordered the plaintiffs to answer the defendants' questions regarding their immigration status. The plaintiffs did so, and on March 27, 2006, the defendants filed a supplemental motion for summary judgment. On April 10, 2006, the plaintiffs responded. This matter is now ready for disposition.

I. Motion to dismiss Maximina Flores, Maximino Flores, and Isaias Flores Lagunes

The defendants filed a motion to dismiss the plaintiffs' claims for failing to respond to discovery requests regarding their immigration status. The plaintiffs have now complied with the defendants' discovery requests. Consequently, the Court denies the motion to dismiss.

II. Motion for summary judgment

To grant a motion for summary judgment, this Court must find that the documents filed in support thereof establish that there are no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56. The moving party bears the initial burden of specifying the basis for its motion and identifying that portion of the record which demonstrates the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party satisfies this burden, the non-moving party then must produce specific facts demonstrating a genuine issue of material fact for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If the non-moving party cannot

do so, the court must grant the motion

1 Hoffman Plastics Compounds, Inc. v Nat'l Labor Relations Bd

In the response to the Court's January 27, 2006 order, the plaintiffs provided the defendants information regarding their immigration status. All three plaintiffs admitted that they are unauthorized aliens and submitted false employment documents to the Social Security Administration. Upon receiving these admissions, the defendants filed a supplemental brief contending that the Supreme Court's decision in Hoffman Plastics Compounds, Inc. v Nat'l Labor Relations Bd, bars the plaintiffs' claims in this action. 535 U.S. 137 (2002).

In Hoffman Plastics Compounds, Inc. v Nat'l Labor Relations Bd, the National Labor Relations Board ("NLRB") found that Hoffman Plastics Compounds, Inc. ("Hoffman") had violated the National Labor Relations Act ("NLRA") by terminating an employee, who was an unauthorized alien, for engaging in protected union activities. 535 U.S. 137, 141-142 (2002). The NLRB awarded the unauthorized alien wages he would have earned had Hoffman not terminated him. Id. The Supreme Court reversed the decision holding that the NLRB abused its discretion by awarding back pay to the unauthorized alien because such an award contravened express congressional policies set forth in the Immigration Reform and Control Act ("IRCA") prohibiting the use of forged employment documents to gain employment. Id. at 151-152.

The defendants contend that Hoffman applies in this case to bar recovery by the plaintiffs. However, in Hoffman, the Supreme Court applied a long-standing rule that the NLRB does not have authority to award back pay to employees found guilty of serious illegal conduct in connection with their employment. Hoffman, 535 U.S. at 143. Finding the unauthorized alien's conduct violated IRCA, the Supreme Court reversed the NLRB's decision. Id. at 152.

The Supreme Court did not hold that IRCA precludes district courts from awarding unauthorized aliens damages provided under federal or state law. See Riveria v. NIBCO, Inc., 364 F.3d 1057, 1068-1069 (9th Cir. 2004). Therefore, the Court must make its own determination of whether IRCA prohibits the plaintiffs from bringing this action.

In 1986, Congress enacted IRCA, which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. Hoffman, 535 U.S. at 147. "The general purpose of IRCA is to diminish the attractive force of employment which, like a magnet, pulls illegal immigrants towards the United States." Hoffman, 535 U.S. at 155 (Breyer, J., dissenting).

Allowing an employer to escape liability arising from violations of federal and state labor laws provides incentives to hire unauthorized aliens, thereby defeating IRCA's purpose of reducing employment opportunities for unauthorized aliens. See Patel v. Quality Inn South, 846 F.2d 700, 704-705 (11th Cir. 1988); see also Hoffman, 535 U.S. at 155-156 (Breyer, J., dissenting). Moreover, a House of Representatives Judiciary Committee Report indicates that IRCA was not intended to limit the enforcement of labor laws. H.R. Rep. 99-682, at 58 (1986), reprinted in 1986 U.S.C.A.N. 5649, 5662. Therefore, the Court holds that IRCA does not preclude the plaintiffs from bringing suit under federal or state labor laws.

In addition, IRCA does not prohibit an unauthorized alien from bringing a claim under RICO. The plaintiffs' RICO claim is based on the defendants' alleged pattern of immigration law violations. The enforcement of federal immigration laws is in accordance with IRCA. Moreover, any person who "is capable of holding a legal or beneficial interest in property" may bring an action under RICO. 18 U.S.C. §§ 1961(3) and 1964(c). The plaintiffs' alleged injuries

are lost wages. Unauthorized aliens are entitled to minimum and overtime wages under the FLSA. See Patel, 846 F.2d at 706.¹ The plaintiffs have a legal interest in these wages and may bring an action under RICO to recover the same. IRCA does not preclude the plaintiffs from bringing the federal and state law claims for withheld wages or the RICO claim.

2. RICO

Maximino Flores states that L&L sold him immigration documents and collected the purchase price through deductions to his pay check. Isaras Flores Lagunes states that L&L provided employment documents to him. The defendants provided company housing to the plaintiffs. The plaintiffs have testified that agents of L&L threatened them with deportation when they complained of withheld wages or inadequate housing. A genuine issue of material fact exists as to whether the defendants damaged the plaintiffs through a pattern of immigration law violations. Consequently, the defendants' motion for summary judgment in favor of dismissing the RICO claim is denied.

3. Wrongfully withheld wages

The plaintiffs have testified that the defendants owe them hourly wages and overtime wages. The defendants have not demonstrated the absence of a genuine issue of material fact concerning the plaintiffs' lost wages. Consequently, the defendants' motion for summary judgment in favor of dismissing the claims under the FLSA, Payment of Wages Act, breach of contract, and other equitable remedies is denied.

III. Class certification

¹ The Supreme Court has also held that unauthorized aliens are 'employees' covered under the NLRA. Sure-Tan, Inc. v. Nat'l Labor Relations Bd., 467 U.S. 883, 893 (1984).

The plaintiffs seek to represent a class consisting of other employees of L&L and WLL who did not receive hourly wages and overtime wages in accordance with federal and state law. The plaintiffs are directed to file a motion supporting their claim of class certification within thirty-days of the filing of this order. The defendants then have thirty-days to respond.

The defendants' motion to dismiss is denied. The plaintiffs have withdrawn the civil conspiracy claim. The defendants' motion for summary judgment in favor of dismissing the remaining claims is denied.

AND IT IS SO ORDERED

May 11, 2006
Charleston, South Carolina

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
Civil Action No. 2 04 1295 12

Maximino Flores Maximina Flores
and Isaias Flores Individually
and on behalf of Others Similarly Situated

Plaintiffs,

vs

MOTION FOR CLASS
CERTIFICATION

Lawton Limehouse Sr, Lawton Limehouse Jr
L&L Services LLC WLL LLC unknown
John Doe individuals, and unknown businesses
including, but not limited to, A B & C temporary
staffing agencies, farms hotels restaurants, golf
courses construction companies, landscaping
services, cleaning services, municipalities, and
other undiscovered businesses owned by or
affiliated with Defendants

Defendants

COME NOW the Plaintiffs by and through the undersigned counsel and
respectfully request that this Court certify the class defined below for the reasons set forth
herein

I. INTRODUCTION

Plaintiffs move for class certification pursuant to Rule 23 of the Federal Rules of
Civil Procedure. The class action Complaint on which this Motion for Class Certification
is based arises out of the employee abuses and racketeering activities of Defendants
Lawton Limehouse Sr Defendant Lawton Limehouse Jr Defendants L&L Services



LLC and WLL, LLC, and other John Doe and A B & C Defendants, through violations of P L 91 452, 84 Stat 922, 941 (1970) (hereinafter 1970 Act) 18 U S C §§ 1961 to 1968 as well as violations of other federal and state laws as detailed below

This case fits squarely into the category of cases for which Rule 23 was promulgated the class members are sufficiently numerous, the issues presented are common to the claims of each member of this requested class, the claims of the representative Plaintiffs arise from the same factual matrix and are based on the same legal theories as the claims of absent class members and thus are typical and the adequacy of representation of the absent class members cannot credibly be challenged Certification under either Federal Rule of Civil Procedure 23(b)(1)(A), 23(b)(2) or 23(b)(3) is justified because

- (1) the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct
- (2) Defendants have acted on grounds generally applicable to the whole class thereby making final injunctive relief appropriate, and
- (3) questions of law or fact common to the members of the class predominate over any questions affecting individual members and that a class action is superior to other available methods for a fair and efficient adjudication of the controversy

Accordingly, the Court should certify this case as a class action allow the class representatives and class counsel to serve the class members and allow notice of the suit and certification to all class members

II. NATURE OF CASE AND STATEMENT OF MATERIAL FACTS

This Complaint has been brought by the Plaintiffs on their behalf and for all others similarly situated to vindicate their rights and the rights of a class of similarly situated persons (hereinafter Class Members) to receive full, fair, and lawful compensation for their labor and damages suffered as a result of Defendants' racketeering scheme. As described in the Complaint and RICO Case Statement (attached as Exhibit A) the Defendants' acts and omissions include, but are not limited to, an unlawful scheme to cheat, steal, and convert the money and property of the Plaintiffs and Class Members who provided labor services in exchange for wages (hereinafter Scheme to Cheat). Second Amended Complaint (SAC) ¶¶ 2, 10, 20; RICO Case Statement (RCS) No. 10. This Scheme to Cheat the Plaintiffs for the economic benefit of the Defendants involves, among other crimes, harboring aliens, false identification documents, false immigration documents, federal and state extortion and money laundering. SAC ¶¶ 70, 79; RCS No. 20.

As part of the Scheme to Cheat, the Plaintiffs and Class Members in this action were hired by the Defendants as employees. They performed services at various area businesses on a temporary basis. SAC ¶ 10. The businesses that made use of employees from Defendants' Enterprise paid salaries and wages directly to the Individual Defendants. SAC ¶ 11. The businesses benefited by not paying wages or benefits such as health or worker's compensation insurance. *Id.* The Individual Defendants, in turn, took at least \$4.00 per hour from each of their employees' wages and then issued paychecks to the employees from their own payroll. SAC ¶ 12.¹

¹ To facilitate their Scheme to Cheat, the Defendants provided vans to shuttle the employees back and forth from the substandard company-owned/leased residences where the majority of the company employees

The Plaintiffs and Class Members allege that Defendants developed a Scheme to Cheat whereby they would illegally willfully and consistently withhold portions of their employees' wages without any justification or right under state or federal law. SAC ¶¶ 15-71, 72, RCS No. 20, See also March 30, 2005 Deposition of Maximino Flores, p. 8-11, 18-22, p. 9-11, 5-7 (attached as Exhibit G), March 30, 2005 Deposition of Isaias Flores, p. 17-11, 19-21 (attached as Exhibit C), March 24, 2005 Deposition of Maximina Flores, p. 9-11, 15-20, 25, p. 10, 1-10 (attached as Exhibit E). Also, the Plaintiffs and Class Members allege that Defendants developed a Scheme to Cheat whereby they would illegally willfully and consistently fail to compensate their employees at the rate of one-half times the regular rate for hours worked in excess of forty (40) hours a week. SAC ¶¶ 16-16, RCS No. 20, see also March 30, 2005 Deposition of Maximino Flores, p. 16, 11, 5-14, March 30, 2005 Deposition of Isaias Flores, p. 6, 11, 8-24, p. 18-11, 1-7, March 24, 2005 Deposition of Maximina Flores, p. 23-11, 2-6. Defendants divided the hours employees worked between two companies—which deposition testimony proves were one and the same²—so that an employee who worked over forty (40) hours would receive two

were harbored to the various work sites. *Id.* see also Deposition of Carlton Elliott, p. 35-11, 22-25, p. 36-11, 1-14 (attached as Exhibit B); Deposition of Lawton Limehouse, Sr., p. 26-11, 1-25, p. 27-1-25 (attached as Exhibit I); Deposition of Lawton Limehouse, Jr., p. 6-11, 19-25, p. 7-11, 1-43, 11-20-25, p. 44-11, 1-8 (attached as Exhibit J); March 30, 2005 Deposition of Maximino Flores, p. 13-11, 19-25, p. 14-11, 1-25, p. 15-11, 12 (attached as Exhibit G); July 6, 2005 Deposition of Maximino Flores, p. 31-11, 1-25, p. 33-11, 4-8, p. 112-11, 10-25, p. 113-11, 1-5, p. 119-3-25, p. 120-11, 1-11, p. 121-11, 2-16, p. 122-11, 2-25, p. 123-11, 1-25, p. 125-11, 21-25 (attached as Exhibit H); March 30, 2005 Deposition of Isaias Flores, p. 25-11, 16-20, p. 26-11, 1-25, p. 27-11, 1-25, p. 28-11, 1-4 (attached as Exhibit C); July 19, 2005 Deposition of Isaias Flores, p. 48-11, 23-25, p. 49-11, 1-20 (attached as Exhibit D); March 24, 2005 Deposition of Maximina Flores, p. 18-11, 7-25, p. 19-11, 1-25, p. 20-11, 1-11, 17-19 (attached as Exhibit G); July 8, 2005 Deposition of Maximina Flores, p. 40-11, 16-25, p. 41-11, 1-8 (attached as Exhibit F). The housing the individual Defendants provided was substandard. Often, ten to thirty and sometimes more employees were crowded into the homes. Many of the homes used by Defendants to harbor their employees were deemed uninhabitable by city inspectors. SAC ¶¶ 14, July 19, 2005 Deposition of Maximino Flores, p. 119-3-25, p. 120-11, 1-11, p. 121-11, 2-16 (attached as Exhibit H).

² The Limehouse companies, WLL, LLC and L&L Services, LLC, failed to recognize any practical separation from one another. See Deposition of Carlton Elliott, pp. 9-14 (attached as Exhibit B); Deposition of Lawton Limehouse, Sr., p. 32-11, 15-25, p. 33-11, 1-4 (attached as Exhibit I); Deposition of

checks one issued by L&L Services and another from WLL LLC so that neither company ended up paying for work exceeding forty (40) hours thus circumventing federal overtime requirements SAC ¶ 17, RCS No. 20 Deposition of Lawton Limehouse Jr. p. 36 ¶ 4, 12, 20, 25, p. 37, ¶ 1, 21 p. 51 ¶ 20, 25 p. 52 ¶ 1, 3 (attached as Exhibit J) Deposition of Patricia Fitzhugh, p. 13 ¶ 20, 25 p. 14 ¶ 1, 10 (attached as Exhibit M) March 30, 2005 Deposition of Maximino Flores p. 5 ¶ 17, 25 p. 6 ¶ 1, 16, p. 10 ¶ 21, 25 p. 11 ¶ 1, 3 p. 16, ¶ 5-14, p. 21, ¶ 24, 25 p. 22 ¶ 1, 4, 11, 12, 15, 18 (attached as Exhibit G) July 6, 2005 Deposition of Maximino Flores p. 74, ¶ 18, 25 p. 75 ¶ 18, 25 p. 104 ¶ 16-21 (attached as Exhibit H) Supplemental Discovery Responses by Maximino Flores (attached as Exhibit N) Exhibit V (example of employee pay stubs showing division of payment between L&L Services, LLC and WLL, LLC) The Class Plaintiffs and other Class Members were thereby denied the federally mandated time and one half compensation for hours worked over forty (40) in a week. This scheme had an added benefit to Defendants in that it enabled them to provide temporary workers to their clients who had exceeded 40 hours for a particular work week and would normally be entitled to overtime- something the client did not want to pay.

Defendants also manufactured and provided to Plaintiffs and Class Members false Resident Alien cards and Social Security cards, examples of which are attached hereto as

Lawton Limehouse Jr., p. 33 ¶ 11, 25 p. 34 ¶ 1, 3 p. 35 ¶ 20, 23 (attached as Exhibit J) The testimony shows that Defendants intermingled WLL's and L&L Services including employees and using the same office space Deposition of Lawton Limehouse Sr. p. 32, ¶ 15, 25, p. 33 ¶ 1-4 (attached as Exhibit I) Deposition of Lawton Limehouse, Jr. p. 33 ¶ 11, 25 p. 34 ¶ 1, 3 p. 35 ¶ 20-23 (attached as Exhibit J) They even used the same typewriters, chairs, and desks among other things Deposition of Carlton Elliott, p. 10 ¶ 20, 22, p. 13 ¶ 4-6 (attached as Exhibit B) Moreover, when asked how he would know when he was doing something for WLL versus L&L Services, he answered "I wouldn't know. Although we used the same laborers, everybody worked for both companies." Deposition of Carlton Elliott pp. 12 ¶ 24-25 & p. 12 ¶ 1, 3 (attached as Exhibit B) The Department of Labor concluded L&L and WLL were too closely combined Deposition of Lawton Limehouse, Jr. p. 35 ¶ 20, 23 (attached as Exhibit J) Exhibit R1

Exhibit X. See also SAC ¶¶ 20 74-75 RCS No. 20 March 30, 2005 Deposition of Maximino Flores, p. 10 ¶ 23-25 p. 11 ¶ 1-3 (attached as Exhibit G) July 6 2005 Deposition of Maximino Flores p. 73, ¶ 23-25 p. 74 ¶ 8-25 p. 75, ¶ 1-3 ¶ 8-25 p. 76 ¶ 1-8 p. 78 ¶ 15-25, p. 84 ¶ 10-25 p. 85 ¶ 1-6 ¶ 14-22 p. 86, ¶ 12-25 p. 87, ¶ 1-3 p. 95 ¶ 2-25, p. 96, ¶ 1-25 p. 103 ¶ 2-13 p. 104 ¶ 16-21 (attached as Exhibit H) Supplemental Discovery Responses by Maximino Flores (attached as Exhibit N) July 19 2005 Deposition of Isaias Flores p. 59 ¶ 12-21, p. 64, ¶ 8-19 (attached as Exhibit D) Supplemental Discovery by Isaias Flores (attached as Exhibit O) (Detailing that Defendants provided false Resident Alien cards and Social Security cards to the employees) Depositions of Elvira Luebke pp. 60-61 p. 62 ¶ 1, p. 63, ¶ 3-25 p. 64, ¶ 1-3 (attached as Exhibit K) Carlton Elliott p. 82, ¶ 9-25, pp. 83-85 (attached as Exhibit B) Lawton Limehouse Sr., p. 18 ¶ 18-25 p. 19 ¶ 1-25 p. 20 ¶ 1-16 (attached as Exhibit I), Lawton Limehouse Jr. p. 40 ¶ 20-25 p. 41 ¶ 1-6 (attached as Exhibit J), and Deposition of Patricia Fitzhugh p. 14 ¶ 11-25 p. 15 ¶ 1-25 p. 16 ¶ 1-25 p. 17 ¶ 1-5 (attached as Exhibit M) (detailing involvement of Defendants' manager Rodolfo Cenalti in the manufacture of fraudulent Social Security cards and resident alien cards)

Ms. Zerbst, Defendants' Accountant, testified that there were a lot of "odd" social security numbers. See Deposition of Pamela Zerbst, p. 23 ¶ 1-25, p. 27, ¶ 9-21 (attached as Exhibit L). Defendants took deductions from each employee for Social Security and Medicare and reported false Social Security and other identification numbers to the Social Security Administration. As a result of this practice, Defendants

received hundreds of "No Match" letters from the Social Security Administration³ See Representative Sample of "No Match" letters received by Defendants attached as Exhibit Q Deposition of Lawton Limehouse, Sr., p. 24, ll. 11-25 p. 25 ll. 1-18 (attached as Exhibit I) Deposition of Patricia Fitzhugh, p. 20, ll. 8-25 p. 21 ll. 1-23 p. 22 ll. 11-25, p. 23 ll. 1-18 (attached as Exhibit M) Deposition of Pamela Zerbst p. 27 ll. 5-17 (attached as Exhibit L)

Finally, the U.S. Department of Labor has investigated Defendants and determined that their employees are entitled to the protections to the Fair Labor Standards Act (FLSA) governing payment of wages and overtime. See Exhibit R1. The instant lawsuit alleges FLSA violations as early as 1999 to present. SAC ¶ 8. Moreover, the Department of Labor has assessed fines against Defendants resulting from their underpayments, based on a figure of 223 employees. See Exhibit R1 *supra*. The vast majority of employees have not received any settlement amounts assessed against Defendants by the Department of Labor. See Exhibit R2 (showing list of employees identified and paid).

III STANDARD OF REVIEW

This Court has broad discretion in determining whether to certify a given class. *Stott v. Haworth*, 916 F.2d 134 (4th Cir. 1990); *Weiss v. York Hosp.*, 745 F.2d 786, 811 (3rd Cir.) *cert. denied*, 470 U.S. 1060 (1984). First, for purposes of class certification, the facts of the Complaint must be taken as true. *E.g., In re Playmobil Antitrust Litig.*, 35 F. Supp. 2d 231, 236 (E.D.N.Y. 1998) ("When deciding a motion for class certification, the court should accept the allegations of the complaint as true.") *Herbert B. Newberg &*

³ While Plaintiffs dismissed the Social Security claims originally alleged in the Complaint, this was only done as to streamline damages determinations. They are still relevant as evidence and form part of the scheme to defraud by Defendants.

Alba Conte eds 2 NEWBERG ON CLASS ACTIONS, § 7.23 (3d ed. 1992) ("NEWBERG")

Second, inquiry is limited only to whether the requirements of Federal Rule of Civil Procedure 23 have been met, and not on the underlying merits of the case. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974); *Pomdexter v. Teubert*, 462 F.2d 1096 (4th Cir. 1972); *United Brotherhood of Carpenters & Joiners of Amer. Local 899 v. Phoenix Assoc. Inc.*, 152 F.R.D. 518 (S.D.W. Va. 1994). Third, [w]hen there is a question as to whether certification is appropriate, the Court should give the benefit of the doubt to approving the class. *In re Workers' Compensation*, 130 F.R.D. 99, 103 (D. Minn. 1990); *Petruzzi v. IGA Supermarkets Inc. v. Darling Delaware Co. Inc.*, 1992 WL 212226 at *2 (M.D. Pa. 1992). The class certification rules in this Circuit are to be interpreted liberally based on the realities and peculiarities of each case to come before the court. *Chisolm v. TransSouth Fin. Corp.*, 194 F.R.D. 538, 545 (E.D. Va. 2000) (certification of RICO action).

IV ARGUMENT

A The Class Satisfies the Prerequisites of Rule 23(a)⁴

A suit may be maintained as a class action if it satisfies the four prerequisites of Federal Rule of Civil Procedure 23(a) and, in addition, meets the conditions of either one of the subsections of Federal Rule of Civil Procedure 23(b). As set forth in *Gariety v. Grant Thornton, LLP*, 368 F.3d 356 (4th Cir. 2004), the four prerequisites of Rule 23(a) are

⁴ The Court will note that the FLSA expressly allows employees to maintain a class action for overtime pay on their own behalf and on behalf of all others similarly situated. 29 U.S.C. § 216(b). The FLSA class certification provision further provides that any employee who desires to be a plaintiff in an action give his consent in writing to become such a party, which Plaintiffs have already done. [Docket Entry No. 33]. The only other requirement is that the plaintiffs in the class be "similarly situated." For the reasons discussed herein related to Plaintiff's satisfaction of Federal Rule of Civil Procedure 23's requirements, Plaintiffs satisfy the FLSA's requirement that they be "similarly situated."

- (1) the class is so numerous that joinder of all members is impracticable
- (2) there are questions of law or fact in common to the class
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class and
- (4) the representative parties will fairly and adequately protect the interests of the class

As demonstrated below, Plaintiffs satisfy each of these requirements.

1. Joinder Is Sufficiently Impracticable

Joinder is not practicable in this case given the large number of Defendants, former employees. No specified number of plaintiffs is needed to satisfy this requirement. *Brady v Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984); *United Brotherhood of Carpenters & Joiners of Amer. Local 899 v Phoenix Assoc. Inc.*, 152 F.R.D. 518, 521-22 (S.D. W. Va. 1994). Although there are no hard and fast rules specifying how many class members are necessary to satisfy this requirement, case law provides that a class with 18 or more members is presumptively large enough to meet the numerosity threshold of Rule 23(a)(1). *United Brotherhood of Carpenters & Joiners of Amer. Local 899*, 152 F.R.D. at 522; *Cypress v Newport News General & Nonsectarian Hosp. Assoc.*, 375 F.2d 648, 652-54 (4th Cir. 1967); *Brady v Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (75 members appropriate); *Weiss v York Hosp.*, 745 F.2d 786, 808 n.35 (3rd Cir. 1984) *cert. denied*, 470 U.S. 1060 (1985) (40 or more members presumptively large enough) (quoting from 3B J. MOORE, MOORE'S FEDERAL PRACTICE, ¶23.05[1] at 23-150 (2d ed. 1982)). Furthermore, the leading class action treatise provides

In light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone. 1 NEWBERG § 3.05 p. 3-25

See also *Robidoux v. Celani*, 987 F.2d 931, 936 (2nd Cir. 1993), *Bachman v. Collier*, 73 F.R.D. 300, 304 (D.D.C. 1976) (certifying class of 63 members), *U.S. ex rel. Walker v. Mancusi*, 338 F. Supp. 311, 315-16 (W.D.N.Y. 1971) (upholding a class of only 38 as sufficient to meet the numerosity requirement).

Here, the Class is sufficiently numerous. The Class includes potentially hundreds of workers who reside throughout Charleston County, South Carolina, in adjacent counties, in other states, in Mexico, and in other Latin American countries. At points during the time period in question, Defendants employed over 200 employees. See Deposition of Lawton Limehouse, Jr. p. 19, ll. 11-19. The Class is defined as all persons who worked for the Defendants and their companies, who did not receive their hourly wages and/or overtime wages in accordance with federal and state law. The class period begins at five years prior to the date of the filing of the Complaint in this action. SAC ¶ 42.

A class of this size is so numerous as to render joinder impracticable within the meaning of Rule 23(a)(1). Joinder is especially impracticable here since members of the class reside in as yet undisclosed locations and are not readily identifiable through any efficient means without the vehicle of class notification. Thus, the impracticability of joinder is clearly met. The fact that the exact number in the class has yet to be identified is irrelevant, as [c]ourts have not required evidence of exact class size or identity of class members to satisfy the numerosity requirement. 1 *Robidoux*, 987 F.2d at 935.

2 Common Issues of Law and Fact Exist

The commonality requirement of Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The overriding issues in this case are whether Defendants *inter alia* withheld wages and overtime and whether their conduct amounted to racketeering. SAC ¶¶ 46-48. They did so through a unified course of conduct which affected the class by its application.

Common questions of fact and law relevant to Plaintiffs' claims include *inter alia*

- whether Defendants withheld wages and overtime
- whether Defendants engaged in a pattern of federal and state extortion,
- whether Defendants harbored aliens
- whether Defendants provided false identification documents and false immigration documents and
- whether Defendants engaged in a pattern of money laundering

Class members stand in an identical position with respect to these issues⁵ in that they were harmed when Defendants improperly withheld wages and overtime and by the overall racketeering scheme. Even if the issues of law and fact were not identical, even a single common question among class members satisfies Rule 23(a)(2). *See e.g. Jenkins v. Raymark Indus. Inc.*, 782 F.2d 468, 472 (5th Cir. 1986) ("threshold of commonality is not high"). The fact that Defendants' conduct did not vary—*i.e.* that their conduct

⁵ Although Plaintiffs believe that certification is appropriate based on evidence proffered herein, Plaintiffs are prepared to offer affidavits or testimony at the certification hearing in further support of their arguments.

affected all class members uniformly⁶—is clear evidence of a ‘common nucleus’ of operative facts necessary to satisfy Rule 23(a)(2).⁷ *In re Williams Antitrust Litig.* 2001 WL 856292 at *2 (D.D.C. 2001). Therefore, it can only be concluded that common issues of law and fact exist.

With respect to the class allegations, discovery has demonstrated *inter alia*: (1) Defendants’ practices are standardized and are tied to Defendants’ own standard documents, business records and practices; (2) Defendants consistently withheld portions of their employees’ wages; (3) Defendants consistently failed to compensate their employees at the rate of one-half times the regular rate for hours worked in excess of forty (40) hours a week; (4) Defendants manufactured and provided to Plaintiffs and Class Members false Resident Alien cards and Social Security cards; (5) Defendants deducted a transportation fee from all employee checks; (6) Defendants required employees to stay at the company provided housing; (7) Defendants received hundreds of “No Match” letters from the Social Security Administration; and (8) Defendants routinely and consistently used intimidation tactics and threatened the Plaintiffs and Class Members with deportation and other repercussions if they did not comply. All this evidence shows a commonality in pattern and experience across the board by the Plaintiffs and class members.

⁶ SAC ¶¶ 16-20.

⁷ There is more than just a “single question of law and fact” common to all members of the class. These common issues include, but are not limited to: whether Defendants violated anti-racketeering laws; illegally manufactured government documentation to allow them to perpetuate their illegal practices; including their failure to pay wages and overtime to Plaintiffs and their Class Members; whether Defendants failed to pay wages; whether Defendants failed to pay overtime; and other violations of state and federal law articulated herein; and other yet undiscovered violations of state and federal law.

Although Defendants will likely argue that the practices described herein and the damages suffered were individualized the evidence shows otherwise Defendants engaged in a pattern of conduct that affected the class as a whole and was not limited to the Representative Plaintiffs The Defendants overall treatment of every member of the class is by all accounts and as a practical matter the same These examples of uniformity place the pattern and practice of the Defendants squarely within the cases certifying class actions

Plaintiffs and the class members were routinely underpaid for the hours and overtime they had worked This is supported by deposition testimony and Defendants own business documents March 30 2005 Deposition of Maximino Flores, p 8, ll 18-22, p 9, ll 5-7 March 30 2005 Deposition of Isaias Flores p 17, ll 19 21 (attached hereto as Exhibit C), March 24 2005 Deposition of Maximina Flores p 9 ll 15 20 25 p 10 1-10 (attached as Exhibit E), Exhibit U (check stubs with notes about missing hours) Additionally, the Department of Labor found that Defendants had underpaid 223 of their employees See Exhibit R1 Defendants would routinely threaten the class members with the INS and the police department July 6 2005 Deposition of Maximino Flores, p 139 l 25, p 140, ll 1 11 p 141 ll 18-23 24 25, p 142 ll 1-19 (attached as Exhibit H) Affidavit of Maximino Flores at #6, #7 and #8 attached as Exhibit P), July 19 2005 Deposition of Isaias Flores, p 76, ll 13 19 (attached as D) July 8, 2005 Deposition of Maximina Flores p 48 ll 14-23 (attached as Exhibit H) Exhibit Y (City of North Charleston Police Report addressing threats) Exhibit S (Letter from Employees to Lawton Limehouse, Sr) These threats were made to the class members as a whole Defendants provided Plaintiffs and class members with false Resident Alien cards and

Social Security cards March 30 2005 Deposition of Maximino Flores p 10 ll 23 25
p 11 ll 1 3 (attached as Exhibit G) July 6 2005 Deposition of Maximino Flores, p 73
ll 23 25, p 74, ll 8 25 p 75 ll 1-3 18 25 p 76 ll 1 8, p 78 ll 15 25 p 84 ll 10 25
p 85 ll 1 6, 14 22 p 86 ll 12 25 p 87 ll 1 3 p 95, 2 25, p 96 ll 1-25 p 103, ll 2
13 p 104 ll 16 21 (attached as Exhibit H), Supplemental Discovery Responses by
Maximino Flores (attached as Exhibit N) July 19, 2005 Deposition of Isaias Flores p
59 ll 12 21 p 64, ll 8 19 (attached as Exhibit D) Supplemental Discovery by Isaias
Flores (attached as Exhibit O) (Detailing that Defendants provided false Resident Alien
cards and Social Security cards to the employees) Depositions of Elvira Luebke pp 60-
61 p 62 1 1 p 63 ll 3-25 p 64 ll 1 3 (attached as Exhibit K), Carlton Elliott, p 82
ll 9 25 pp 83 85 (attached as Exhibit B) Lawton Limehouse Sr p 18 ll 18 25, p 19
1 25 p 20, ll 1 16 (attached as Exhibit I), Lawton Limehouse, Jr, p 40, ll 20 25 p 41,
ll 1-6 (attached as Exhibit J), and Deposition of Patricia Fitzhugh p 14 ll 11 25, p 15
ll 1-25 p 16 ll 1 25 p 17 ll 1 5 (attached as Exhibit M) (detailing involvement of
Defendants' manager Rodolfo Cenali in the manufacture of fraudulent Social Security
cards and resident alien cards) As a result of this practice, Defendants received
hundreds of "no match" letters from the Social Security Administration Deposition of
Lawton Limehouse, Sr p 24 ll 11 25 p 25, 1-18 (attached as Exhibit I) Deposition of
Patricia Fitzhugh, p 20, ll 8 25, p 21 ll 1-23 p 22, ll 11-25, p 23 ll 1 18 (attached as
Exhibit M)

In addition there are hundreds of Social Security and Resident Alien cards found
in the files seized by the Postal Inspectors from Defendants' offices The class members
were forced to live in sub standard housing provided by the company and charged a fee

for transportation regardless of whether they used it or not. Deposition of Carlton Elliott, p. 35, ll. 22-25; p. 36, ll. 1-14 (attached as Exhibit B). Deposition of Lawton Limehouse Sr., p. 26, ll. 1-25; p. 27, ll. 1-25 (attached as Exhibit I). Deposition of Lawton Limehouse Jr., p. 6, ll. 19-25; p. 7, ll. 1-43, ll. 20-25, p. 44, ll. 1-8 (attached as Exhibit J), March 30, 2005 Deposition of Maximino Flores, p. 13, ll. 19-25; p. 14, ll. 1-25; p. 15, ll. 1-12 (attached as Exhibit G). July 6, 2005 Deposition of Maximino Flores, p. 31, ll. 1-25; p. 33, ll. 4-8; p. 112, ll. 10-25; p. 113, ll. 1-5; p. 119, ll. 3-25; p. 120, ll. 1-11; p. 121, ll. 2-16; p. 122, ll. 2-25; p. 123, ll. 1-25; p. 125, ll. 21-25 (attached as Exhibit H). March 30, 2005 Deposition of Isaias Flores, p. 24, ll. 16-20; p. 25, ll. 1-25; p. 26, ll. 1-25; p. 27, ll. 1-4 (attached as Exhibit C). July 19, 2005 Deposition of Isaias Flores, p. 48, ll. 23-25; p. 49, ll. 1-20 (attached as Exhibit D). March 24, 2005 Deposition of Maximina Flores, p. 18, ll. 7-25; p. 19, ll. 1-25; p. 20, ll. 1-11, ll. 17-19 (attached as Exhibit G). July 8, 2005 Deposition of Maximina Flores, p. 40, ll. 16-25; p. 41, ll. 1-8 (attached as Exhibit H).

3 The Claims of the Class Representatives Are Typical

The third requirement for class certification under Rule 23(a) is that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Again, the typicality requirement is met here because Class Plaintiffs' claims arise from the same legal violations as the claims of absent class members and are based on identical legal theories. A class should be certified where the central allegations of each individual class member arise from the same operative facts and where the facts on which named plaintiffs will rely (i.e., violation of federal and state wage payment laws and anti-racketeering laws) are similar to those on which absent class members would rely. See *Robidoux*, 987 F.2d at 936-37 (quoting *NEWBERG*, § 3.13), see

also e.g. *Weiss v. York Hosp.*, 745 F.2d at 809 n.36 (holding typicality entails an inquiry whether "the named plaintiff's individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members [are] based"). *In re School Asbestos Litig.*, 789 F.2d 996, 1000 (3rd Cir. 1986) (typicality satisfied when "the named plaintiffs stood in a position similar to other members of the class").

That is precisely the situation here. As the class allegations and evidence shows class members assert, and did in fact suffer, the same harm, the same course of events, and will use the same legal arguments to prove liability. See SAC ¶ 41 (uniform class definition), ¶¶ 44-45 (claims or defenses typical), ¶ 47 (same damages), ¶ 48 (common issues of law and fact). Plaintiffs' claims are thus typical of those of the class. Moreover, Plaintiffs have reduced the number of Class Representatives from fourteen to three and have eliminated certain Social Security, Medicare and the Civil Conspiracy allegations which should streamline the certification process.

4. The Class Representatives Are Adequate

A representative class plaintiff is adequate if prior to and throughout the course of litigation they, among other duties self-evident in the course of litigation, (1) understand the nature of the class action, (2) have agreed to appear for trial and depositions, and (3) have remained in contact with class counsel whom satisfies the requirements of Rule 23(a)(4). With respect to Rule 23(a)(4), class counsel will fairly and adequately protect the interests of the class if they are qualified, experienced, and generally able to vigorously prosecute the suit, and if the attorneys with respect to the subject matter of the litigation are not antagonistic to or in conflict with the interests of the absent class.

members.⁸ Any alleged antagonism among the class members must be as to the subject matter of the suit.” *State v. Alex*, 646 P.2d 203, 214 (Alaska 1982). The representative’s and the class’s interests need not be identical, they should, however, share common objectives and legal or factual positions. Under well settled rules, “[t]he burden is on the defendant to demonstrate that the representation will be inadequate.” *Sala v. National R.R. Passenger Corp.*, 120 F.R.D. 494, 498 (E.D. Pa. 1988).

The adequacy requirement is satisfied. Here, there is no question that the Representative Plaintiffs fully understand the nature of this litigation, have participated in depositions, have attended hearings, maintained contact with class counsel, and have otherwise assisted with the prosecution of their case. In addition, Class Plaintiffs are represented by attorneys who are experienced in litigating complex class action claims. See Exhibit T (detailing experience of Hulsey Litigation Group, LLC and attorneys Paul H. Hulsey, Cherie K. Durand and William J. Cook). Counsel representing the class is, under any definition, “qualified, experienced, and generally able” to conduct the litigation. Class counsel consists of attorneys who collectively have handled and managed mass tort, complex, and class action litigation. Class counsel have earned national and international reputations for litigation of mass tort cases and complex litigation of all types. See Exhibit T, *supra*. Counsel will vigorously prosecute this case as a class action and will dedicate the time of their law firm and fund their firm’s expenses. Moreover, class counsel has assigned specific tasks to different members of the group to eliminate redundancy and inefficiency, conserve the costs of prosecution,

⁸ While experience in class action litigation is a factor favoring counsel’s qualifications, general litigation skills, ability to fund the litigation, and federal court experience are also pertinent. Counsel have qualified as class counsel in certain cases even on the basis of familiarity with mass tort litigation in general. See e.g., *In re Joint Eastern and Southern Dist. Asbestos Litig.*, 78 F.2d 764, 778 (2nd Cir. 1996).

and to move forward expeditiously on a number of fronts at the same time. Relying on the substantial precedent for class certification here, the fact that a class complaint is presumptively valid as a class action, the strong desires of the class representatives to proceed in a class action, and the personal commitment of class counsel to the endeavor, class counsel has already spent numerous hours investigating, preparing, and organizing this class action case.

Further, Class Plaintiffs have no interests with respect to this litigation that conflict with or are antagonistic to, the interests of absent class members. *See Amchem Products Inc. v. Windsor*, 521 U.S. at 625 (1997) (‘The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.’) As evidence of the lack of any conflict, Class Plaintiffs and absent class members agree, by definition, that United States and South Carolina law prohibit Defendants’ illegal employment practices and racketeering activities, and that they have suffered identical damages as a result insofar as Defendants have not paid the Plaintiffs for services rendered. They also seek disgorgement of all ill-gotten gains, an accounting, and restitution on behalf of all class members. SAC ¶¶ 125 (disgorgement and restitution), 134 (accounting). By prosecuting this action, Class Plaintiffs will necessarily advance and protect the interests of all other class members. Moreover, “[a]bsent any conflict between the interests of the representative and other [members of the class] and absent any indication that the representative will not aggressively conduct the litigation, fair and adequate protection of the class may be assumed.” *In re Playmobil Antitrust Litigation*, 35 F. Supp. 2d at 243. Such is the situation here.

B. The Requirements of Rule 23(b) Are Also Satisfied

Rule 23(b) provides that an action may be maintained as a class action if the prerequisites of Rule 23(a) are satisfied and in addition any one of the following conditions is met

- The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct (Rule 23(b)(1)(A))
- Defendants have acted on grounds generally applicable to the whole class thereby making final injunctive relief appropriate (Rule 23(b)(2)) and
- Questions of law or fact common to the members of the class predominate over any questions affecting individual members and that a class action is superior to other available methods for a fair and efficient adjudication of the controversy (Rule 23(b)(3))

First, under Rule 23(b)(1) a class should be certified if the provisions of Rule 23(a) (discussed above) are satisfied and the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct. Here Plaintiffs are numerous and reside in different counties within the state, other states and some have returned to their Latin American countries of origin. If they were to prosecute separate actions in either the state and/or federal courts, they would create an unavoidable risk of inconsistent or varying adjudications that would establish incompatible standards of conduct based on laws that apply to Defendants no matter where their conduct occurred. Clearly, it would be in Defendants' best interests to ensure that the matter is certified here.

so that Defendants, as well as Plaintiffs, can ensure an efficient and consistent resolution of all claims and purported defenses

Second as an alternative reason to certify the class, Rule 23(b)(2) provides that an action may be maintained as a class action if "The party opposing the class has acted or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. The instant class should be certified because it fulfills these requirements

The requirement that the party opposing the class has acted in a manner generally applicable to the class is satisfied if the Defendants' actions affect all persons similarly situated so that such acts apply generally to the whole class. *Phillips v Brock*, 652 F Supp 1372, 1376-77 (D Md 1987) (certifying a nationwide class of alien farm workers where employer acted in a manner applicable to entire class), *vacated on other grounds Phillips v McLaughlin*, 854 F 2d 673 (4th Cir 1988). In the instant case, the Defendants have clearly acted in a way generally applicable to the whole class. Class Members include all persons who worked for the Defendants and their companies and who did not receive their hourly wages and/or overtime wages in accordance with federal and state law. SAC ¶41. As alleged in the Complaint as part of their racketeering scheme, Defendants failed, *inter alia* to pay wages and overtime (SAC ¶¶ 15-17 *see also* Department of Labor Investigation documents attached as Exhibit R), and Plaintiffs continue to be deprived of their wages and overtime owed to them because Defendants have never paid them for their services rendered. By definition, then Defendants have acted in a way that affects all members of the class similarly

In addition any action properly brought under Rule 23(b)(2) must request final injunctive or declaratory relief against the party opposing the class. Here, Plaintiffs request this Court require the Defendants to provide an accounting for all sums they illegally and improperly retained from the Plaintiffs and Class Members out of the practices alleged herein and to determine all wages and benefits the Plaintiffs would have been entitled to receive had the Defendants' conduct been lawful, and to determine which Defendants, named or unnamed, may be responsible. SAC ¶ 134. In addition, the Complaint pleads unjust enrichment (SAC ¶¶ 122-25) and requests disgorgement (SAC ¶ 125), restitution (SAC ¶ 125), and injunctive relief prohibiting Defendant from continuing to engage in the illegal practices described herein. SAC ¶ 3, Sec. XII. Therefore, the requirement that final injunctive or declaratory relief be requested is therefore unquestionably met.

Third, in addition to either of the alternative grounds discussed above, the Court may also certify the class pursuant to Rule 23(b)(3). Rule 23(b)(3) provides that a class should be certified if questions of law or fact common to the members of the class predominate over any questions affecting individual members and that a class action is superior to other available methods for a fair and efficient adjudication of the controversy. Matters pertinent to this finding include:

- (1) the interest of the members of the class in individually controlling the prosecution or defense of separate actions,
- (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class.

(3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and

(4) the difficulties likely to be encountered in the management of a class action

Proof of predominance and superiority are addressed specifically in order below

As a threshold matter there are no individual questions of fact or law (and thus common questions predominate) because the conduct of the Defendants is the same as to all members of the class failure to pay wages and other racketeering activities. The evidence shows that the conduct applied not only to the named Plaintiffs but also to the class as a whole. The harm, as alleged in the Complaint, is the deprivation of lawfully earned wages and overtime which formed part of the Defendants' racketeering scheme as well as the equitable relief claims and "other relief" in addition to the monetary damages. SAC ¶¶ 15-19. Plaintiffs were also harmed because Defendants used their racketeering scheme to threaten, intimidate and control the Plaintiffs. Any difference as to amounts paid is readily ascertainable and known to Defendants thus to the extent individual damages might differ such difference would not present a barrier to certifying the class.⁹ The inquiry is flexible, and examines whether the common issues are a significant enough part of the case that proceeding as a class action makes sense. "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products Inc v Windsor*, 521 U.S. at 623; *Leirhart v Dryvit Systems Inc*, 255 F.3d 138 (4th Cir. 2001); *Cohen v District of Columbia National Bank*, 59 F.R.D. 84-90 (D.D.C. 1972); *In re Playmobil*

⁹ Individual damage issues do not defeat class certification. E.g. *Uniondale Beer*, 117 F.R.D. at 344. 7B WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE § 1781, at 8 ("[I]t uniformly has been held that differences among the members as to the amount of damages incurred does not mean that a class action would be inappropriate.")

Antitrust Litig. 35 F. Supp. 2d at 245 ("The predominance requirement is satisfied unless it is clear that individual issues will overwhelm the common questions to render the class action valueless.")

In Section IV A. above, Plaintiffs listed the major questions and issues common to the class. Those issues, which affect each and every class member, completely dominate the litigation, as they are determinative of liability, damages calculations and distribution, and whether certain identifiable assets can be used to satisfy any of the class's claims. Individually and collectively, those issues overwhelm any issue that might be peculiar to an individual class member. Moreover, to the extent Defendants argue that individualized issues exist, they need not overwhelm the common issues[] *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 437 n.12 (4th Cir. 2003), *Christman v. American Cyanamid Co.*, 92 F.R.D. 441, 452 (N.D. W. Va. 1981).¹⁰ Stated another way, "[f]actual differences will not necessarily render a claim atypical if the representative's claim arises from the same event, practice or course of conduct that gives rise to the claims of the class and is based on the same legal theory." *Dameron v. Sinai Hospital of Baltimore, Inc.*, 593 F. Supp. 1404, 1408 (D. Md. 1984).

Here, the failure to pay wages and overtime and racketeering claims of both the Class Plaintiffs and Class Members arise from the same event, practice or course of conduct. *Id.* Furthermore, Defendants' practices are standardized, and are tied to Defendants' own standard documents and business records.¹¹ See e.g., SAC ¶¶ 15, 17,

¹⁰ See also the unreported Order of *Tipson v. Secretary of Education*, 1993 WL 545724 (S.D. W. Va. 1993) (Copenhaver, J.) ("It has been recognized that not all factual or legal questions raised in the lawsuit need be common so long as a single issue is common to all class members.")

¹¹ For example, comparisons of Defendants' own timesheets detail the pattern and practice by which Defendants accounted for paid and manipulated wage payments to their workers. Deposition of Elvira Luecke p. 26 ll. 2-25; p. 27 ll. 1-18 (attached as Exhibit K). Defendant Lawton Lueckhouse Sr.

48(a) 63(b) Deposition of Carlton Elliott, p 37 ll 8-19 p 44, ll 6 24, p 46, ll 6 25 p 47 ll 1 11 p 59, ll 3 25 (attached as Exhibit B) Deposition of Lawton Limehouse Sr p 14 ll 1-25 (attached as Exhibit I), Deposition of Lawton Limehouse Jr, p 23 ll 20 25, p 24, ll 1 25, p 25 ll 1 25 p 26, ll 1 6 (attached as Exhibit J) Deposition of Elvira Luebke, p 42 ll 3-13 p 66 ll 18 25, p 67, ll 1 3 (attached as Exhibit K), Deposition of Patricia Fitzhugh p 10 ll 2 18 p 12, ll 6-25, p 13 ll 1 13 39, ll 9 25 p 40 ll 1 25 p 41 ll 1-25 p 42 ll 1-25 p 43 ll 1 6 (attached as Exhibit M), Deposition of Pamela Zerbst, p 11 ll 15-24 p 12, 4-24 (attached as Exhibit L) Exhibits Z1 Z13 (representative standardized documentation)¹² These standardized practices affected the Plaintiffs in a uniform, standardized way monetarily (they did not receive their wages and overtime) and non monetarily (Defendants threatened intimidated and controlled them through their racketeering scheme) Therefore the proof will be substantially the same for each of Representative Plaintiffs and other Class Members No individualized determinations are required *E.g. Spencer*, 778 F Supp 985 991 & n 5 (N.D. Ill. 1991) (citations omitted) See also *Cannon v Nationwide Acceptance Corp* 1997 WL 779086 at *3 (N.D. Ill. Dec 12 1997) ("reliance can be inferred from the fact that the alleged loan flipping scheme was built on standardized forms and conduct and the class members refinanced their loans despite the fact that it was a poor financial decision")

Defendant Limehouse Jr and Defendants manager Carlton Elliott also testified about the standard documents used by the Defendants and their companies including the identification cards provided to workers and other forms of identification Defendants used Deposition of Lawton Limehouse Sr p 18 ll 1 14 (attached as Exhibit I) Deposition of Lawton Limehouse Jr p 18 ll 4 25 p 19 ll 1 10 (attached as Exhibit J) Deposition of Carlton Elliott p 41 ll 18 25 p 42 ll 1 25 (attached as Exhibit B)

¹² Defendants' pattern and practice is not limited to failure to pay wages and overtime, and has been the topic of the news articles. See Exhibit W (articles included therein)

In *Sterling v. Velsicol Chemical Corp.*, 855 F.2d 1183 (6th Cir. 1988) the court explained that common questions “predominate” when liability in individual actions would require an almost identical evidentiary showing to be repeated thousands of times if the class’s claims were to be tried individually. This is precisely the case here. Liability turns on proof of various causes of action arising from Defendants’ unlawful business practices which include, but are not limited to:

- Defendants’ violation of § 1962(a) (SAC ¶¶ 84-89)
- Conspiracy in Violation of § 1962(d) to Violate § 1962(a) (SAC ¶¶ 90-95),
- Violation of § 1962(c) (SAC ¶¶ 96-101)
- Conspiracy in Violation of § 1962(d) to Violate § 1962(c) (SAC ¶¶ 102-07),
- Violations of the Fair Labor Standards Act (SAC ¶¶ 151-54),
- Violations of the Payment of Wages Act (SAC ¶¶ 108-11) and
- Breach of Contract (SAC ¶¶ 116-19)

Plaintiffs were damaged thereby and are thus entitled to an accounting, restitution disgorgement and declaratory relief. See SAC ¶¶ 120-25, 133-35.

Furthermore, adjudicating Plaintiffs’ claims as a class action is superior to other methods of litigation. Class actions are the paradigmatic method of resolving mass liability cases like the present one, where liability for the class turns on identical questions of law and fact, such as those described above. 3 NEWBERG § 17.01, pp. 17-3 to 17-4. Another reason proceeding as a class action meets the superiority test of Rule 23 is that individual actions against these Defendants would not be pursued. As the Second Circuit articulated in *Escott v. Barchus Construction Corp.*, 340 F.2d 731, 733 (2nd Cir. 1965):

In our complex modern economic system where a single harmful act may result in damages to a great many people there is a particular need for the representative action as a device for vindicating claims which taken individually, are too small to justify legal action but which are of significant size if taken as a group. In a situation where we depend on individual initiative particularly the initiative of lawyers for the assertion of rights there must be a practical method for combining these small claims, and the representative action provides that method.

See also Cohen v. District of Columbia Nat'l Bank 59 F.R.D. at 90 (D.D.C. 1972)

In addition, these policies are especially relevant here where government authorities have failed to stop Defendants' unlawful practices.

Modern society seems increasingly to expose men to such group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much contemporary law.

Harry Kalven, Jr. & Maurice Rosenfield, *The Contemporary Function of the Class Suit*

8 UNIVERSITY OF CHICAGO LAW REVIEW 684, 686 (1941). Writing about thirty years

later, the Honorable Jack B. Weinstein echoed this view:

Where the public authorities are remiss for a variety of reasons— inadequate legal authority, too heavy workload, or what have you—the class action does furnish a desirable remedy. When the organization of a modern society, such as ours, affords the possibility of illegal behavior, accompanied by widespread diffuse consequences, some procedural means should exist to remedy or at least deter that conduct.

Jack B. Weinstein, *Some Reflections on the Abusiveness of Class Actions* 58 F.R.D. 299, 305 (1973).

This is not to suggest that the claims of the individual members are necessarily 'small.' Indeed, the opposite is the case. But the point is that the practical economics of labor costs, and time in this action—with its necessarily high expenditures—demonstrate that aggregation of individual causes of action is the only way prosecuting the claims.

makes economic senses. Without aggregation as a class, discovery would be repetitive and unduly expensive[.]” *Ballard v. Blue Shield of Southern W. Va., Inc.* 543 F.2d 1075, 1080 (4th Cir. 1976), *see generally* Rosenberg, *Mandatory-Litigation Class Action: The Only Option for Mass Tort Cases*, 115 HARV L. REV. 831 (2002).

In addition to the factors outlined above, the Class Plaintiffs clearly have an interest in prosecuting this action as they brought the action initially and have developed the legal theories supporting the claims of the members of the class. The second factor—extent of litigation—plaintiffs have been engaged in the present litigation since the filing of the lawsuit, which has included their active participation in discovery. Third, the present forum is clearly convenient because it is or is near the locus of the events that led to the filing of the Complaint and Defendants are residents here. The fourth factor—manageability—presents no problem because of the identical nature of the claims alleged and for the reasons of efficiency already discussed above. Furthermore, recent court decisions that have certified RICO class actions have done so in the context of millions of plaintiffs (*Carnegie v. Household International, Inc.* 376 F.3d 656 (7th Cir. 2004)) and in the context of far greater complexity of claims (*Chisolm v. TransSouth Fin. Corp.* 194 F.R.D. 538 (E.D. Va. 2000); *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir. 2004)). The instant lawsuit is much narrower and far more tailored in comparison.

CONCLUSION

For the foregoing reasons, the class representatives respectfully request that the Court grant their motion for certification of a class under Federal Rule of Procedure 23 to pursue the claims alleged in their Complaint.

Respectfully submitted this 9th day of June 2006 in Charleston, South

Carolina, through electronic means

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of June 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following

John Allen Massalon, Esquire
Willis and Massalon
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S/ Paul H. Hulsey
HULSEY LITIGATION GROUP LLC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO 06-CP 10-1578

LAWTON LIMEHOUSE JR)
)
Plaintiff)
)
-versus)
)
PAUL H HULSEY, and THE HULSEY)
LITIGATION GROUP, LLC,)
)
Defendant)

ANSWER

FILED
2006 AUG 29 PM 1 15
JULIE J ARMSTRONG
CLERK OF COURT

COMES NOW the Defendant Paul H Hulsey, individually, and on behalf of himself and the Hulsey Litigation Group and for Plaintiff's Complaint alleges and states the following

- 1 The Defendants deny each and every, all and singular the allegations of the Complaint except as are specifically admitted herein
- 2 The Defendants admit the allegations of Paragraph 1 of the Complaint
- 3 The Defendants admit the allegations of Paragraph 2 of the Complaint
- 4 The Defendants admit the allegations of Paragraph 3 of the Complaint
- 5 The Defendants admit the allegations of Paragraph 4 of the Complaint
- 6 The Defendants do not have sufficient knowledge so as to admit or deny the majority of Paragraph 6 of the Complaint and for this reason deny the same except that the Defendants admit that Lawton Limehouse Jr was born and lives in Charleston County
- 7 The Defendants admit the allegations of Paragraph 6 of the Complaint
- 8 With respect to the allegations of Paragraph 8 the Defendants admit that the Plaintiff employed many individuals and further answering, affirmatively states that the majority

of the Plaintiff's employees were known to him to be illegal aliens, the availability of which his business depended upon

9 The Defendants do not have sufficient knowledge so as to admit or deny the allegations of Paragraph 8 of the Complaint and for these reasons deny the same

10 The Defendants admit the allegations of Paragraph 9 of the Complaint.

11 The Defendants deny the allegations of Paragraph 10 of the Complaint

12 The Defendants deny the allegations of Paragraph 11 of the Complaint

13 The Defendants deny the allegations of Paragraph 12 of the Complaint

14 The Defendants deny the allegations of Paragraph 13 of the Complaint.

15 The Defendants deny the allegations of Paragraph 14 of the Complaint

16 The Defendants deny the allegations of Paragraph 15 of the Complaint

17 The Defendants deny the allegations of Paragraph 16 of the Complaint.

18 The Defendants deny the allegations of Paragraph 17 of the Complaint

19 With respect to the allegations of Paragraph 18 of the Complaint, the Defendants deny the allegations of Paragraph 18 deny any statements were made which were intended to or did denigrate the Plaintiff and further affirmatively allege and state that the Plaintiff's manner and method of operating his businesses was in fact a RICO enterprise Further answering, the Defendants allege and state the Plaintiff was unsuccessful in moving to dismiss the allegations of the RICO enterprise in the United States District Court for the District of South Carolina in the case of *Maximino Flores et al v Lawton Limehouse Sr et al* Civil Action Number 2 04 1295 12, the aforementioned federal lawsuit with its RICO allegations surviving both a Motion to Dismiss and a Motion for Summary Judgment

20 The Defendants deny the allegations of Paragraph 19 of the Complaint

21 The Defendants deny each and every all and singular the allegations of Plaintiff's

First Cause of Action except as are specifically admitted herein

22 The Defendants deny the allegations of Paragraph 20 of the Complaint

23 The Defendants deny the allegations of Paragraph 21 of the Complaint

24 The Defendants deny the allegations of Paragraph 22 of the Complaint

25 The Defendants deny the allegations of Paragraph 23 of the Complaint

26 The Defendants deny the allegations of Paragraph 24 of the Complaint

27 The Defendants deny the allegations of Paragraph 25 of the Complaint

28 The Defendants deny the allegations of Paragraph 26 of the Complaint

29 The Defendants deny the allegations of Paragraph 27 of the Complaint

30 Further answering the Defendants state that there is complete failure of causation between any of the alleged statements and any damages which have allegedly been sustained in that prior to the publication of the article in question, it had been publicly reported *inter alia*

a. That the Plaintiff and his companies were the subject of several separate investigations by state and federal agencies relating to the nonpayment of wages and overtime to 223 hourly employees and that the U S Department of Labor had determined the Plaintiff and his companies had violated the Fair Labor Standards Act by failing to pay the applicable minimum wage and/or failing to pay overtime,

b. That the Plaintiff used his two temporary labor agencies L & L Services LLC and WLL, LLC, in order to pay workers for 40 hours work from one

company account and for hours worked in excess of 40 hours from the other company account in order to pay their "overtime" as regular time because it was a different company

- c That an investigation of sixty social security numbers recorded by the Plaintiff and his companies and used in connection with providing temporary labor to Charleston area businesses determined that only two numbers were legitimate
- d That the high number of mismatched social security numbers shined light on the national issue of foreign workers willing to work long hours for low wages,
- e That some current and former employees claimed that the Plaintiff and his companies provided and sold false identification papers and that laminated cards were printed on the back of L & L Services, LLC's cards,
- f That some workers had been issued two sets of identification cards with two different company issued photo identification cards under two separate names
- g That employees had been issued two pay stubs with only a one letter change in the spelling of the name, under two separate social security numbers, neither of which matched the employee. For example the pay stubs of one worker established the employee worked 37.3 hours for L & L Services, LLC at \$6.00 an hour and another 32 hours at \$6.00 an hour for WLL, LLC

- h That an employee of Plaintiff's companies had two company-issued identification cards, one in his name and one in the name of a former employee both cards bore the same picture,
- i That the Plaintiff and his companies provided housing in company controlled properties which were significantly overcrowded as evidenced by an unannounced raid by North Charleston City inspectors finding 31 men and women crowded into two single family residences including five men sleeping in a storage shed and another raid finding 10 people living in the same residence
- j That the Plaintiff and his companies practice of housing employees in overcrowded conditions constituted multiple violations of City Housing Codes
- k That the Plaintiff and his companies relocated one family from a seriously overcrowded house to an isolated, rundown trailer set off in the woods with no heat,
- l That the above employee had pay stubs showing 40 hours worked for L & L Services, LLC under one name and an additional 18 5 hours worked by the same employee under the different name for the same company In that case, neither social security number matched the names
- m That many employees produced pay stubs showing they worked 40 hours for one company while simultaneously working additional time over 40 hours that was paid through the other company,

- n That it was difficult to tell the difference between L & L Services, LLC
and WLL LLC in that they both were run out of the same house by the
same people and had no license to do business in Charleston, North
Charleston or Charleston County,
- o Plaintiff and his companies were subject to the Workmen s Compensation
laws of the State of South Carolina
- p That the Plaintiff reported that he had two companies on account of the
workers' compensation system because certain types of jobs tend to be
more risky than others like those in the construction industry,
- q However, it was publicly reported that an investigation determined that
neither WLL LLC or L & L Services LLC carried workers' compensation
insurance,
- r That although Plaintiff stated that WLL, LLC was the company that
provided workers for the construction industry and therefore only it needed
the worker s compensation coverage (which neither company had) at least
one construction company interviewed reported that at the end of work
weeks, checks were written to L & L Services LLC not WLL, LLC

AFFIRMATIVE DEFENSES

The Defendants for their affirmative defenses, allege and state the following

- 1 That all of the facts and circumstances resulting in the Plaintiff's closure of its
temporary staffing agency were described in exquisite detail in news accounts of the

investigation of the Plaintiff and his companies by the City of North Charleston South Carolina Worker's Compensation Commission United States Department of Labor and others as related by the Post and Courier and others and it was such publicity rather than anything printed subsequently that caused Plaintiff's damages, if any

2 That Plaintiff had, for all intents and purposes closed its business prior to the newspaper article in question That nothing published in the article in question could have or did cause Plaintiff to suffer monetary damages

3 That Plaintiff violated the law in his operation of his businesses and such violations as well as the publicity subsequently attendant thereto, but prior to the article in question were the proximate cause of his damages if any

4 The Plaintiff in his operation of his business and in all matters material hereto had unclean hands

5 That Plaintiff previously sought redress of the matters complained of in his Complaint with the United States District Court for the District of South Carolina, did not appeal the Orders issued therein and for such reasons the matters complained of in the Complaint are subject to the defense of *res judicata*

6 To the extent that Plaintiff alleges any damages, he has failed to mitigate the same

7 Plaintiff has failed to properly state a claim upon which relief may be granted To the extent that Plaintiff has made a threshold showing, then at the time the Defendants answered questions by the newspapers concerning the lawsuit which had been filed in the United States District Court for the District of South Carolina under the Racketeer Influenced Corrupt

Organizations Act (RICO), there was a good faith belief in the truth of the matters as stated directly to the reporter in question and as such that truth is an ultimate defense to this action. To the extent the complained of matter consisted of opinions, such are subject to interpretation and neither stated nor intended to be statements of ultimate fact.

8 That the discussions had with the reporter in questions, from which Plaintiff complains, were made for illustrative purposes only in good faith and based upon extensive factual and legal investigation

9 The Plaintiff's damages if any, were the result of his own conduct rather than any statements made by Defendants and for such reason Plaintiff should take nothing by his Complaint.

10 Further answering, the Defendants state that the statute of limitations has run with respect to the commencement of this action and allege such further defenses as discovery may disclose

Submitted this 29 day of August, 2006, at Charleston South Carolina



PAUL H. HULSEY
Hulsey Litigation Group, LLC
2 Wharfside 3
Charleston, SC 29401
Tel (843) 723 5303
Fax (843) 723-5307

ATTORNEY FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29 day of August, 2006, served a copy of the foregoing ANSWER upon the following individuals by placing same, postage prepaid in the United States Mail, addressed to

Frank M Cisa Esq
CISA & DODDS, LLP
622 Johnnie Dodds Blvd
Mt Pleasant SC 29464

Paul Dodds

FILED
2006 AUG 29 PM 1 15
JULIE J ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Lawton Limehouse, Jr) C/A No 06-CP-10-1578

Plaintff,

vs

Paul H Hulsey and The Hulsey
Litigation Group , LLC,

Defendants

NOTICE OF MOTION
AND MOTION
TO COMPEL

2009 JUL 23 AM 9 57
JULIE J ARMSTRONG
CLERK OF COURT

FILED

TO FRANK M CISA, ESQUIRE, ATTORNEY FOR PLAINTIFF

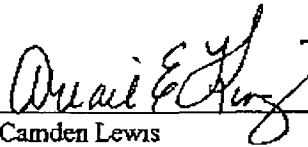
You will please take notice that Defendant Paul H. Hulsey will move, before the Presiding Judge, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, for an Order compelling discovery in this case. This motion is made pursuant to Rules 33, 34, and 37 SCRCF, and involves Defendant's failure to respond to Plaintiff's Interrogatories and Request for Production.

On May 20 2009 Defendant Paul H. Hulsey served Interrogatories on the attorney for Defendant a copy of which are attached as Exhibit A. On the same date, Defendant served its Request for Production of Documents on the attorney for Plaintiff, a copy of which is attached as Exhibit B. By letter dated June 23, 2009, Plaintiff's counsel took the position that the Defendants were in default and thus, not entitled to engage in discovery. However, the Rules of Civil Procedure do not prohibit a party in default from participating in discovery. As of today's date, no response has been received for either discovery request.

Based on the foregoing, Plaintiff seeks an Order from this Court ordering Defendant to respond to its Interrogatories and Requests to Produce, dated, and attached hereto

In addition, pursuant to Rule 37 Plaintiff will seek an Order awarding the reasonable expenses for this motion, including attorneys fees

LEWIS & BABCOCK, L.L.P



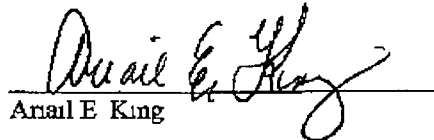
A Camden Lewis
Anail E King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Plaintiff

Columbia, South Carolina

July 20th, 2009

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure the undersigned hereby that no consultation was help prior to filing this motion because consultation would serve no useful purpose



Anail E King

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LAWTON LIMEHOUSE JR.,

Plaintiff

vs

PAUL H HULSEY AND THE HULSEY
LITIGATION GROUP, LLC

Defendants

IN THE COURT OF COMMON PLEAS

FOR THE

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO 06-CP 10-1578

**DEFENDANT PAUL H HULSEY'S
FIRST SET OF INTERROGATORIES
TO PLAINTIFF**

TO FRANK M CISA ESQ , ATTORNEY FOR PLAINTIFF

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant Paul H Hulsey hereby propounds and serves the following written interrogatories upon Plaintiff, each to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof

INTERROGATORIES

1 Give the names and addresses of persons known to the parties or counsel to have knowledge concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

2 Set forth a list of photographs plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case

3 Set forth an itemized statement of all damages, exclusive of pain and suffering claimed to have been sustained by the party

4 List the names and addresses of any expert witnesses whom the party proposes to use



as a witness at the trial of the case

5 For each person known to the parties or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses

8 For each expert witness whom the party proposes to use as a witness at the trial of the case state

- a the subject matter on which the expert is expected to testify,
- b the substance of the facts and opinions to which the expert is expected to testify, and,
- c a summary of the grounds for each opinion

6 With regard to Paragraph 10 of the Complaint set forth the specific facts to support the allegations that " Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post & Courier staff "

7 With regard to Paragraph 9 of the Complaint, set forth the specific facts that support the allegation that Plaintiff Lawton Limehouse Jr. has worked and devoted his full time and efforts to building and establishing the aforesaid staffing agencies

8 With regard to Paragraph 16 of the Complaint, set forth the specific facts that support the allegation That the statements made by Defendant, Paul H. Hulsey as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against the Plaintiff and Plaintiff's companies and also with the intent to attract individuals who would become members of the class

action suit so the Defendants could early potentially large sums of money as legal fees "

9 With regard to Paragraph 17 of the Complaint, set forth the specific facts that support the allegations of that Complaint; in particular, set forth the facts that support the allegation that Paul H Hulsey did "harm and reduce [Plaintiff's] character and reputation in the estimation of his friends, acquaintances business associates, relatives and the public at large and caused the Plaintiff to experience great humiliation, embarrassment and intended to and in fact did disgrace the Plaintiff and rendered him odious, contemptible and subject to ridicule

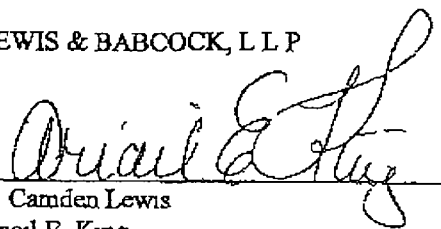
10 With regard to Paragraph 19 of the Complaint, set forth the specific facts that support the allegation that statements made by the Defendant "have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation. "

11 With regard to Paragraph 21 of the Complaint, set forth the specific facts that support the allegation that Plaintiff has been "exposed [to] public hatred, contempt,, ridicule caused him to be shunned or avoided, and injured his office, business and occupation."

12 With regard to Paragraph 24 of the Complaint, list all "other members of the media" to whom Defendant Paul H. Hulsey allegedly made communications

The foregoing interrogatories are to be regarded as continuing and you are requested to provide promptly, by way of supplemental answers thereto such additional information as may hereafter be obtained by you or any person or organization on your behalf which will augment or otherwise modify any answers now given to the foregoing interrogatories

LEWIS & BABCOCK, L L P



A Camden Lewis
Anail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771 8000

Attorneys for Defendant Paul H. Hulsey

Columbia, South Carolina

May 20 2009

CERTIFICATE OF SERVICE

I Kathy A Collins, an employee with the law firm of Lewis & Babcock, L L P , do hereby certify that I have this 20th day of May 2009 served the foregoing Defendant Paul H. Hulsey's First Set of Interrogatories to Plaintiff upon the Plaintiff herein by placing a copy of same in the United States Mail, first-class postage prepaid and return address clearly indicated to counsel of record for Plaintiff addressed as follows

Frank M. Cisa Esq
Cisa & Dodds, LLP
858 Lowcountry Blvd Suite 101
Mt Pleasant, South Carolina 29464


Kathy A. Collins

Columbia, South Carolina

May 20, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LAWTON LIMEHOUSE, JR.

Plaintiff

vs

PAUL H. HULSEY AND THE HULSEY
LITIGATION GROUP LLC

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO 06-CP-10 1578

DEFENDANT PAUL H. HULSEY'S
FIRST REQUESTS FOR
PRODUCTION TO PLAINTIFF

TO FRANK M. CISA, ESQ., ATTORNEY FOR PLAINTIFF

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, [Defendant's Name]

is hereby requested to produce the documents listed below for inspection and copying at the offices of Lewis & Babcock, L.L.P., 1513 Hampton Street, Columbia, South Carolina, at 10:00 a.m. thirty (30) days from the date hereof, or at such reasonable time and place as the requested party shall specify. If a Request for Production seeks a special document or an itemized category that is not in your possession, control or custody, provide any documents that you have that contain all or part of the information contained in the requested document or category and identify who has control and the location of the requested documents, correspondence or memoranda.

The term "documents" when used herein means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody or control, regardless of where located, including, without limiting the generality of the foregoing, electronically stored



information, punch cards, print out sheets, movie film, slides, photographs records, microfilm, notes, letters, memoranda, ledgers, worksheets, books magazines, notebooks, diaries calendars, appointment book registers, charts, cables papers, agreements, contracts purchase orders, acknowledgments, invoices, authorizations, budgets, analysis projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes or computer produced interpretations thereof, instructions, announcements schedules and price lists In all cases where originals and/or non-identical copies are not available, "document" also means identical copies of original documents and copies of non identical copies "Documents shall also include all other writings recordings, or photographs as defined by Rule 1001, South Carolina Rules of Evidence Procedure

NOTE These requests shall be deemed continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

The documents to be produced are the following

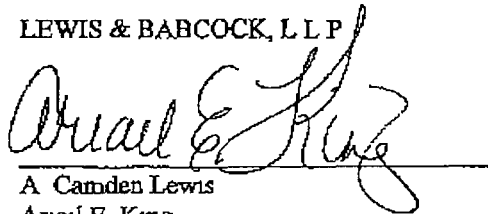
- 1 All documents and statements identified in Answer to First Set of Interrogatories
- 2 All documents Plaintiff to use at the trial of this case as exhibits, demonstrative evidence, or any other purpose
- 3 Copies of all documents obtained by Defendant or anyone acting on his/her/its behalf via Subpoena Duces Tecum, signed authorization form, or other legal process
- 4 All documents showing the damages to Plaintiff (and/or Plaintiff's businesses as alleged in the Complaint.

If any document is withheld under a claim of privilege please identify each such document and the privilege claimed If any document requested is no longer in your possession or subject to your custody or control please state whether it is missing or lost, destroyed,

transferred to others or otherwise disposed of For each document no longer in your custody or control, please describe it fully, and give the name and address of any individual currently possessing it or else any individual familiar with its contents

You are required to produce the documents for inspection as they are kept in the usual course of business or you are required to organize and label them to correspond with the categories of the request

LEWIS & BABCOCK, L L P



A Camden Lewis
Ariail E King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Defendant Paul H Hulsey

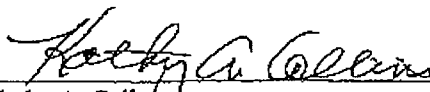
Columbia, South Carolina

May 20 2009

CERTIFICATE OF SERVICE

I, Kathy A. Collins, an employee with the law firm of Lewis & Babcock, L L P , do hereby certify that I have this 20th day of May, 2009, served the foregoing Defendant Paul H. Hulsey's First Requests for Production to Plaintiff upon the Plaintiff herein by placing a copy of same in the United States Mail, first-class postage prepaid and return address clearly indicated to counsel of record for Plaintiff, addressed as follows

Frank M. Cisa, Esq
Cisa & Dodds LLP
858 Lowcountry Blvd Suite 101
Mt Pleasant, South Carolina 29464



Kathy A. Collins

Columbia, South Carolina

May 20, 2009

FILED

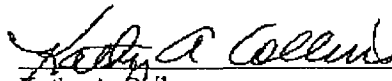
JUL 23 2009

CERTIFICATE OF SERVICE

~~FILED~~

I, Kathy A Collins an employee with the law firm of Lewis & Babcock, L L P , do hereby certify that I have this 21st day of July, 2009 served the foregoing Notice of Motion and Motion to Compel upon the Plaintiff herein by placing a copy of same in the United States Mail first-class postage prepaid and return address clearly indicated to counsel of record for Plaintiff, addressed as follows

Frank M Cisa, Esq
Cisa & Dodds, LLP
858 Lowcountry Blvd Suite 101
Mt Pleasant, South Carolina 29464


Kathy A Collins

Columbia South Carolina

July 21 2009

LAW OFFICES
LEWIS & BABCOCK, LLP
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARRIAL E. KING
PETER D. PROTOFAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

TELEPHONE 803 / 771-8000
FAX 803 / 733-3534
INTERNET FIRM@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

July 21, 2009

The Honorable Julie J. Armstrong
106 Judicial Center
100 Broad Street
Charleston, South Carolina 29401

RE Limehouse vs. Hulsey, et al
C/A No. 06-CP-10 1578

Dear Ms. Armstrong:

Enclosed for filing please find a Notice of Motion and Motion to Compel in the above-captioned matter, along with a motion and order form and our firm's check in the amount of \$25.00. Please clock the copy of same and return to our office via the enclosed envelope.

By copy of this letter, a copy of same is being served on counsel of record.

Thank you for your assistance in this matter.

Sincerely yours,

LEWIS & BABCOCK LLP



Kathy A. Collins
Secretary to A. Camden Lewis
and Arrial E. King

/kc

Enclosures

cc Paul H. Hulsey, Esq.
Cherie Durand, Esq.
Robert H. Hood, Esq.
James B. Hood, Esq.
Frank M. Cisa, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
LAWTON LIMEHOUSE, JR ,	)	
	)	CIVIL ACTION NO 06-CP-10-1578
Plaintiff	)	
	)	DEFENDANT PAUL H. HULSEY'S
vs	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO COMPEL
PAUL H HULSEY AND THE HULSEY	)	
LITIGATION GROUP, LLC,	)	
	)	
Defendants	)	
	)	

Defendant Paul H. Hulsey submits this Memorandum in support of his Motion to Compel

On May 20, 2009, Defendant Hulsey served Interrogatories and Requests for Production. By letter dated June 23, 2009, counsel for Plaintiffs took the position that Defendants were in default and therefore not entitled to discovery. However, during a damages hearing following the entry of a default, the pleadings are not taken as true as to damages, and a plaintiff "must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." Howard v. Holiday Inns, Inc., 246 S.E.2d 880, 881 (S.C. 1978). Thus, even in a default situation the defendant is entitled to rebut Plaintiff's claims for damages.

In order to rebut Plaintiff's damages at trial, Defendants are entitled to cross-examine Plaintiff's witnesses. In Downey v. Dixon, 362 S.E.2d 317 (S.C. Ct. App. 1987), the court recognized that a litigant cannot prepare for an effective cross-examination without discovery.

An abiding maxim of the successful trial lawyer, like the motto of the Boy Scouts is "Be Prepared. The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where those rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required.

Id. at 294 S C 46, 362 S.E.2d 319 (Ct. App 1987)(internal citation and quotation omitted)

By refusing to engage in discovery, Plaintiff is attempting to have trial by ambush, which has been rejected by our courts

The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. Essentially the rights of discovery articulated by the rules give the attorney the means to prepare for trial. Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed.

Scott v. Greenville Housing Authority, 353 S C 639, 579 S.E.2d 151, 158 (Ct. App 2003), 158 (internal citations omitted)

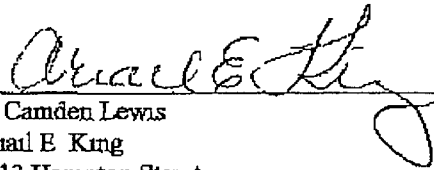
Furthermore, neither the South Carolina Rules of Civil Procedure nor the case law in this state prohibit a party in default from engaging in discovery. In fact, the Court of Appeals recently affirmed a trial court's decision allowing a defaulting party to introduce evidence and an expert witness on the issue of damages. See McCall v. IKON, 670 S.E.2d 695 (S C Ct App 2008). Furthermore, courts in other jurisdictions have recognized that a defaulting party is entitled to full participation in a damages hearing, including the discovery process. In Bort v. Brookstone, 641 A.2d 864 (Me 1994), the court held that it was an abuse of discretion for the trial court to refuse to allow a defaulting defendant to conduct discovery as to damages and to present evidence at trial. In McGarvin-Moberly Const. Co. v. Welden, 897 P.2d 1310 (Wyo 1995) the trial court found that the defaulting defendant would be "allowed to participate fully in the discovery process" as to the plaintiff's damages. Id. at 1313. The appellate court affirmed the trial court's ruling and in fact, extended the ruling by finding that the defendant should not only be permitted to engage in discovery as to damages, but should also be able to defend on the issue of fault of a co-defendant under the doctrine of comparative negligence. Id. See also, Talai v. Tennill, 2006 WL 3690963, 5 (Ky App 2006)(The court held that the plaintiff was obligated to

comply with defendant s discovery requests on damages even though defendant was in default¹
Obviously, even if a defendant is in default, he is entitled to pre-trial discovery as to damages,
and it would be an abuse of discretion to hold otherwise

CONCLUSION

For the reasons set forth herein, Defendants respectfully request that the Motion to
Compel be granted

LEWIS & BABCOCK, L L P



A Camden Lewis
Ariad E King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Defendant Paul H. Hulsey

Columbia, South Carolina

November 3, 2009

¹While the Kentucky Supreme Court reversed in part, the court did not find it was error to permit a defaulting party to serve interrogatories. The court merely found that the plaintiff's failure to respond to such discovery requests did not harm the defendant because the defendant took the deposition of plaintiff and was able to question him on damages at that time. *Tennill v. Talai*, 277 S.W.3d 248 (Ky 2009)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2006-CP 10-1578

LAWTON LIMEHOUSE, Jr)
)
Plaintiff,)

vs)

NOTICE OF MOTION AND MOTION
IN LIMINE

PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP)
LLC)
Defendants)

TO ROBERT H. HOOD ESQUIRE, JAMES B. HOOD ESQUIRE, ARIAN E.
KING, ESQUIRE AND A CAMDEN LEWIS, ESQUIRE ATTORNEYS FOR
THE DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Lawton Limehouse Jr. by and
through his undersigned attorney, prior to the selection of the jury in this action, moves this
Court in limine to instruct the Defendants attorneys, not to introduce, mention, refer to
interrogate concerning, voluntarily answer or attempt to convey before the jury at any time
during these proceedings in any manner either directly or indirectly, the following matters

- 1 Any newspaper articles published in the Post and Courier concerning the Plaintiff
and/or L&L Services, LLC and/or WLL, LLC other than that portion of the Post
and Courier article published on April 24, 2004 that is referred to in the Plaintiff's
Complaint
- 2 Any and all facts or allegations relative to the Plaintiff or L&L Services LLC or
WLL, LLC concerning wage and hour violations housing violations or the
manufacturing of false papers or credentials for employees

- 3 Commenting upon facts not in evidence
- 4 Introducing evidence
- 5 Calling witnesses during the default damages hearing
- 6 Cross examining the Plaintiff or any of the Plaintiff's witnesses concerning why
the Plaintiff lost his business
- 7 Cross examining the Plaintiff or any of the Plaintiff's witnesses concerning any
matter concerning liability or causation

The Plaintiff, moves, through his undersigned attorney, that the attorneys for the Defendants be instructed and cautioned not to inquire, engage in or cross examine relative to the matters referred to herein.

The grounds for this motion are that the Defendants are in default and that truth and mitigation are affirmative defenses which must be raised in the pleadings and that the procedure to be followed in conducting a default damages hearing has been clearly decided by the Appellant Courts of this state.

In Howard v. Holiday Inn, Inc. 271 S.C. 238, 241 246 S.E.2d 880, 882 (1978) the South Carolina Supreme Court determined the procedure to be followed in a default damages hearing. The Supreme Court stated that

"The question of right, if any, a defaulting Defendant has to participate in the proceeding relative to the question of assessing damages has never been judicially resolved in this state. There are three possible approaches. We could (1) allow damages to be determined in an Ex parte proceeding, denying the defendant any right to participate, (2) allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation, or (3) allow damages to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. We hold that this third approach is the proper one and approve it for use in the courts of this state.

Although the approach in Howard has been clarified and expanded upon in subsequent appellate court's decisions, it has not been reversed or modified and is the law of this state relative to assessing damages against a defaulting defendant

In Ammons v Hood, 283 S.E.2d 816, 288 S.C. 278 (S.C. App. 1986) Ammons slipped and fell while walking down the steps at Hood's office which were covered with ice. At the default damages hearing, Ammons' lost wages totaled \$3,500.00. On appeal, Hood alleged error on the part of the trial judge in denying him the right to cross examine Ammons on matters concerning Ammons employment.

In affirming the trial court the Court of Appeals stated

"in a default action, the default judgment settles the issue of liability. The hearing is held solely to determine what damages should be awarded. The trial judge properly allowed Hood to cross-examine the witnesses regarding damages and Hood is entitled to no more. Citing Howard v. Holiday Inn, Inc. 271 S.C. 238, 246 S.E.2d 880 (1978)

In Schenk v. National Health Care, Inc., 471 S.E.2d 736, 322 S.C. 316 (S.C. App. 1996), Schenk filed an action against National Health Care, Inc. alleging she was wrongfully terminated from her position with National Health Care because she had filed a claim for workers' compensation benefits. National Health Care, Inc. was adjudged to be in default. At the default damages hearing the Court awarded Schenk compensation for loss wages in the amount of \$14,994.00.

In the appeal National Health Care, Inc. argued that Schenk failed to establish her damages because she failed to prove the filing of a workers' compensation claim was a

determinative factor in her discharge. National Health Care, Inc. argued that she failed to establish causally related damages by a preponderance of the evidence. The Court of Appeals held, however, that "by defaulting, the company conceded liability."

In Doe v. S.B.M., 327 S.C. 352, 488 S.E.2d 878 (S.C. App 1997), Doe and S.B.M. were involved in a homosexual relationship and lived together for approximately three weeks in Greenville, SC. Doe ended their relationship. Thereafter, S&B contacted Doe's employer and informed him of the parties homosexual relationship.

As a result of S.B.M.'s calls to Doe's employer, his threats to call Doe's customers and vandalism of Doe's car, Doe's employer asked him to resign from the insurance company. Doe was not employed for two (2) months.

At the default damages hearing, S.B.M. was prohibited from cross-examining Doe regarding the reason Doe lost his job. S.B.M. sought to show that Doe lost his job because he was arrested after receiving a citation from the Greenville City Sheriff's Department. The trial judge found that the cross-examination was irrelevant as liability had already been established by the default. The trial judge would not allow S.B.M. to cross-examine as to the cause of the damages but only as to the amount of the damages.

The Court of Appeals held that questions concerning Doe's employment related to liability rather than damages and that the trial court properly prohibited S.B.M. from cross-examining Doe as to the reason he was asked to resign from his job.

In Doe, the South Carolina Court of Appeals, citing Howard and Ammons, affirmed the trial judge's ruling that the Defendant could only cross-examine witnesses as to damages and not as to the cause of the damages.

In Roche v Young Brothers, Inc of Florence 332 S C 75, 81-2, 504 S E 2d 311,314 (S.C 1998). Our Supreme Court, citing Howard and Shenk, stated

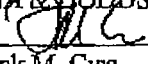
"It is well settled that by suffering a default, the defaulting party is deemed to have admitted to the truth of the plaintiff's allegations and to have conceded liability."

The court went on to state that

"Though a defaulting party may be entitled to notice of the damages hearing that party is limited to cross-examining witnesses and objecting to evidence."

The Court again cited Howard and also cited Armstrong.

CISA & DODDS LLP


Frank M. Cisa

858 Lowcountry Blvd., Suite 101

Mt. Pleasant, SC 29464

(843) 881-6530

Fax (843) 881-5433

Thus ⁴ day of November, 2009
Mt. Pleasant, SC

HOWARD V HOLIDAY INNS, INC
246 S E.2d 880, 271 S C 238 (S C 1978)

Headnotes

Opinion

Cases Citing This Case

Supreme Court of South Carolina

Doris HOWARD and James Howard, Respondents

v

HOLIDAY INNS INC Appellant

No 20741

Aug 14 1978

SYNOPSIS

Appeal was taken from an order of the Common Pleas Court Spartanburg County Paul M Moore, J denying motion to set aside default judgment entered in action for conversion of automobile The Supreme Court, Rhodes J, held that (1) defense counsel's failure to give prompt attention to matter because of his extensive traveling did not constitute excusable neglect justifying setting aside of default and (2) trial court erred in awarding damages in full amount prayed for in complaint without hearing evidence

Affirmed in part, reversed in part and remanded

HEADNOTES

[1] Judgment $\S$ 143(3)

228 —

228IV By Default

228IV(B) Opening or Setting Aside Default

228k143 Excuses for Default

228k143(3) Mistake Surprise, or Excusable Neglect in General

For purposes of setting aside default judgment, it is not sufficient to show neglect unless neglect be made to appear excusable Code 1976 Sec 15-27-130

[2] Judgment $\S$ 143(10)

228 -- -

228IV By Default

228IV(B) Opening or Setting Aside Default

228k143 Excuses for Default

228k143(10) Mistake or Negligence of Counsel in General

Counsel who failed to give prompt attention to action because of his extensive traveling at time service was received from defendant's registered agent failed to establish excusable neglect justifying relief from

default order Code 1976 Sec 15-27-130

[3] Damages ~~C=~~198

115 ---
115X Proceedings for Assessment
115k193 Inquest on Default or Interlocutory Judgment
115k198 Assessment by Jury
[See headnote text below]

[3] Damages ~~C=~~199

115 -- -
115X Proceedings for Assessment
115k193 Inquest on Default or Interlocutory Judgment
115k199 Assessment by Court Without Jury

In a default case, damages may be assessed either by a jury or judge of court Code 1976 Sec 15-35-310

[4] Damages ~~C=~~163(1)

115 -- -
115IX Evidence
115k163 Presumptions and Burden of Proof
115k163(1) Necessity of Proof as to Damages in General

Prayer for relief may not serve as substitute for proof

[5] Damages ~~C=~~184

115 ---
115IX Evidence
115k183 Weight and Sufficiency
115k184 In General

Plaintiff must prove by competent evidence amount of his damages and such proof must be by preponderance of evidence

[6] Damages ~~C=~~199

115 ---
115X Proceedings for Assessment
115k193 Inquest on Default or Interlocutory Judgment
115k199 Assessment by Court Without Jury

In default case, trial court erred in awarding damages in full amount prayed for in complaint without hearing any evidence as to damages Code 1976 Secs 15-35-310 15-35-320

[7] Damages ~~C=~~204

115 —

115X Proceedings for Assessment

115k193 Inquest on Default or Interlocutory Judgment

115k204 Rights of Parties in General

In default case defendant at hearing on damages should be allowed to participate by cross-examining witnesses and objecting to evidence

COUNSEL

[*880] [*238] Carlisle Bean & Hines Spartanburg for appellant.

William R. Easler Spartanburg, for respondents

OPINION

[**239] RHODES, Justice

The plaintiffs respondents commenced this action for conversion of an automobile against the defendant-appellant by service of process on defendant's Registered Agent [*881] for Process. After the expiration of the 20 days permitted for answering, the plaintiffs obtained an order from the circuit judge declaring the defendant to be in default and ordering that a hearing be scheduled for the determination of the amount of damages. Twenty five thousand dollars actual and punitive damages was prayed for in the complaint.

Thereafter, before a hearing was set on the amount of damages, the defendant moved for an order setting aside the default and allowing it to answer the complaint on the merits. The motion was made under s 15-27-130 Code of Laws of South Carolina (1976) which provides in part:

The court may, in its discretion and upon such terms as may be just, at any time within one year after notice thereof relieve a party from a judgment, order or other proceedings taken against him through his mistake, inadvertence, surprise or excusable neglect.

The lower court denied this motion on the ground that the defendant had failed to establish excusable neglect. It granted a default judgment against the defendant in the amount of \$25,000.00, based on the complaint. No evidence on the amount of damages was taken, and apparently the damages were assessed based solely on the prayer for relief.

[1][2] In support of the motion to set aside the default order, the defendant submitted an affidavit of its house counsel, Larry McGrath. In the affidavit, McGrath stated that service had been received from the defendant's registered agent on August 19, and was routed to him for handling. It was not given prompt attention because he was doing "extensive traveling" at the time. The lower court [**240] held that excusable neglect had not been shown. It is not sufficient to show neglect unless the same be made to appear excusable. Hedgepath v. State Highway Dept., 263 S.C. 98, 207 S.E.2d 820 (1974). We agree with the lower court and affirm the court's refusal to set the default order aside. There was no abuse of discretion.

The defendant next contends that the lower court erred in awarding damages because there was no evidence before it on the question of damages. We agree.

[3] In a default case, damages may be assessed either by a jury or the judge of the court. Code s 15-35-310, after setting out the procedure for obtaining a monetary judgment against a defaulting defendant.

in a contract action, provides that "(1) in all other cases the relief to be afforded the plaintiff shall be ascertained either by the verdict of a jury or in cases in chancery by the judge" Section 15-35-320 provides that a plaintiff whether the action or demand "be on contract or in tort" may move to have the judge determine the damages. The present action being one in tort for conversion, damages could be ascertained by a jury or by the court without a jury. Plaintiffs did not move the court to ascertain damages, and it is apparent that the judge, after concluding that the default order should not be set aside of his own volition included in his order an award of damages in the full amount prayed for in the complaint.

[4][5] It is common knowledge at the bench and bar that in a tort action the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover. The prayer in an action may not serve as a substitute for proof. The plaintiff must prove by competent evidence the amount of his damages and such proof must be by a preponderance of the evidence.

In Morgan's, Inc. v. Surinam Lumber Corp., 251 S.C. 61, 66, 160 S.E.2d 191, 193 (1968), this Court said:

Since the account sued upon was an unliquidated demand and an itemized statement thereof duly verified was not [**241] served upon the defendant, plaintiff was required to introduce testimony in proof of the account in order to obtain a valid default judgment. Such was not done and the judgment was improperly entered on the pleadings alone.

[6] The order awarding damages is hereby vacated.

[*882] [7] The defendant further excepts by alleging error on the part of the court in awarding damages without giving to it the opportunity to participate in the hearing on the question of the amount of damages. The question of what right, if any, a defaulting defendant has to participate in the proceedings relative to the question of assessing damages has never been judicially resolved in this state. Inasmuch as the question will no doubt arise upon a remand, we rule upon this exception. In addition to not having found any cases in this state which have ruled upon the issue, the two pertinent sections ss 15-35-310 and 15-35-320 do not expressly permit or prohibit a defaulting defendant's participation in the damages proceeding. Traditionally the judges in this jurisdiction have permitted counsel for a defaulting defendant upon request, to cross-examine the witnesses and object to evidence. In O'Dell v. United Ins. Co. of America, 243 S.C. 35, 132 S.E.2d 14 (1963) and in Cabler v. Hart, 251 S.C. 576, 164 S.E.2d 574 (1968), the opinions recite that defense counsel were permitted, without objection, to appear and contest the issue of damages. There are three possible approaches. We could (1) allow damages to be determined in an Ex parte proceeding, denying the defendant any right to participate, (2) allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation, or (3) allow damages to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. We hold that this third approach is the proper one and approve it for use in the courts of this state.

In Morgan's Inc. v. Surinam Lumber Corp. supra this Court pointed out that there is a difference between a defendant [**242] being declared in default and subsequently having judgment entered against him for damages. By defaulting a defendant forfeits his "right to answer or otherwise plead to the complaint." 251 S.C. at 66, 160 S.E.2d at 193. In essence, the defaulting defendant has conceded liability. However, a defaulting defendant does not concede the Amount of liability. (FN11)

In summary we hold that (1) there was no error on the part of the lower court in refusing to set aside the default order; (2) the court erred in granting judgment without proof of damages; (3) the case is remanded to the lower court for the purpose of a hearing before either a jury or the court on the question of damages; and (4) at such hearing the defendant will be permitted to participate by cross-examining

witnesses and objecting to evidence

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

LEWIS, C J , and LITTLEJOHN, NESS and GREGORY JJ , concur

(FN1) There is an exception. Under s 15-35-310 a defaulting defendant is deemed to have conceded the amount of his liability if the action is one in contract for monetary damages and the demand is liquidated or if unliquidated, an itemized verified statement of account is served with the summons and complaint

AMMONS V HOOD

341 S E 2d 816, 288 S C 278 (S C App 1986)

Headnotes

Opinion

Cases Citing This Case

Court of Appeals of South Carolina

Stanley P AMMONS, Respondent,

v

Bobby HOOD Individually and d/b/a Hood's Used Cars and Parts Appellant

No 0652

Heard Jan 27, 1986

Decided March 17 1986

SYNOPSIS

Employee brought action against employer for negligence. The Common Pleas Court, Marion County Larry R Patterson Special Circuit Judge, granted employee default judgment and \$15,000 in actual damages. The employer appealed. The Court of Appeals, Shaw, J, held that (1) employer was not entitled to relief from default judgment (2) employer was not entitled to raise exclusivity of workers compensation as defense (3) evidence supported award of damages and (4) employer's cross examination during damages hearing was restricted to issue of damages.

Affirmed

HEADNOTES

[1] Appeal and Error ~~C~~ 957(1)

30 —
30XVI Review
30XVI(H) Discretion of Lower Court
30k957 Opening Default
30k957(1) In General
[See headnote text below]

[1] Judgment ~~C~~ 139

228 —
228IV By Default
228IV(B) Opening or Setting Aside Default
228k139 Discretion of Court

Relief from default judgment taken against party through mistake inadvertence surprise, or excusable neglect is solely within sound discretion of trial judge and the Court of Appeals cannot substitute[*817]

its judgment for that of trial court Code 1976 § 15-27-130

[2] Appeal and Error ~~C~~957(1)

30 ---
30XVI Review
30XVI(H) Discretion of Lower Court
30k957 Opening Default
30k957(1) In General

Court of Appeals will not disturb trial court's decision with respect to granting of relief from default judgment taken against party through mistake inadvertence, surprise or excusable neglect absent clear showing of abuse of discretion Code 1976 § 15-27-130

[3] Judgment ~~C~~143(3)

228 ---
228IV By Default
228IV(B) Opening or Setting Aside Default
228k143 Excuses for Default
228k143(3) Mistake, Surprise or Excusable Neglect in General

Neglect of defendant who was a businessman not totally unfamiliar with legal matters and who was informed of his predicament by his personal attorney, who had discovered suit and its status while doing other unrelated work for defendant in failing to file timely answer was inexcusable therefore defendant was not entitled to relief from default judgment. Code 1976, § 15-27-130

[4] ~~C~~2878

231H - -
231HXVII Employer's Liability to Employees
231HXVII(B) Working Conditions and Methods of Performing Work
231Hk2878 Pleading
(Formerly 148Ak180 Employers' Liability)

Employee's complaint against employer alleging negligence which led to employee's slipping and falling while walking down icy steps of employer's office stated cause of action for negligence.

[5] Workers' Compensation ~~C~~2110

413 - -
413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses
413XX(A) Between Employer and Employee
413XX(A)3 Defenses Abrogation or Modification of Common-Law Defenses
413k2110 In General

A defendant who wishes to raise exclusivity of workers' compensation as a defense in negligence action must do so affirmatively

[6] Workers' Compensation ~~C~~2110

413 --

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(A) Between Employer and Employee

413XX(A)3 Defenses Abrogation or Modification of Common-Law Defenses

413k2110 In General

Employer could not raise exclusivity of workers' compensation as a defense to employee's negligence action where employer did not file answer Code 1976, § 42-1-540

[7] ~~Q=~~ 2824

231H --

231HXVII Employer's Liability to Employees

231HXVII(A) In General

231HXVII(A)2 Actions in General

231Hk2821 Damages

231Hk2824 Amount Awarded

(Formerly 148Ak212 Employers' Liability 157k15)

Evidence supported award of \$15,000 in actual damages in favor of employee who broke hip when he slipped and fell while walking down steps of employer's office. Employee incurred medical expenses of \$5,841.23, lost wages totaling \$3,500 at time of hearing, employee suffered permanent disability of probably 25 percent, employee would remain totally disabled for another three months after hearing, and there was evidence regarding restrictions on employee's activities which resulted from injury. Code 1976, §§ 15-35-310, 15-35-320 (Repealed)

[8] Witnesses ~~Q=~~ 270(2)

410 --

410III Examination

410III(B) Cross-Examination

410k270 Cross-Examination as to Irrelevant, Collateral or Immaterial Matters

410k270(2) Particular Matters as Subjects of Cross-Examination

Defendant's cross examination during damages hearing in negligence action was restricted to issue of damages where default judgment had been entered settling issue of liability.

COUNSEL

[*817] [*1279] K. Wayne Shelley Marion for appellant.

James E. Lockamy, of Greene Lockamy & Bailey Dillon for respondent.

OPINION

SHAW Judge

Respondent Stanley P. Ammons sued his employer appellant Bobby Hood for negligence. The trial court granted [*280] Ammons a default judgment and \$15,000.00 in actual damages. Hood appeals and we affirm.

On January 29, 1983 Ammons slipped and fell while walking down the steps of Hood's office. The steps were covered with ice. At the time of the accident, Ammons was employed as a truck driver for Hood, a used car dealer. Ammons broke his hip in the accident and spent 12 days in a hospital undergoing treatment. Hood was served with a summons and complaint on March 9, 1983. He failed to respond and Ammons filed an Affidavit of Default on April 12, 1983. A hearing was held on August 12, 1983 resulting in Ammons receiving a default judgment and damages.

Hood assigns four errors to the trial judge. He alleges the judge erred in (1) denying his motion to permit him to answer late based on excusable neglect or inadvertence and a meritorious defense; (2) denying his motions to dismiss because the complaint fails to state a cause of action and because of a lack of subject matter jurisdiction; (3) awarding excessive actual damages; and (4) denying him the right to cross-examine Ammons on matters concerning Ammons' employment.

[1][2][3] A party may be granted relief from a default judgment "taken against [§ 818] him through his mistake, inadvertence, surprise, or excusable neglect." S.C. Code Ann. § 15-27-130 (1976). However, such relief is solely within the sound discretion of the trial judge and this court cannot substitute its judgment for that of the trial judge. *Marr v. Tesaurro*, 283 S.C. 333, 322 S.E.2d 685 (Ct.App. 1984). This court will not disturb the trial court's decision absent a clear showing of abuse of discretion. *Em-Co Metal Products, Inc. v. The Great Atlantic & Pacific Tea Co., Inc.*, 280 S.C. 107, 311 S.E.2d 83 (Ct.App. 1984). Hood contends the trial court abused its discretion. We disagree. Hood is a businessman and admits being literate. He claims he was suffering from business-related stress at the time of service and was extremely busy. He maintains he did not understand his failure to answer would result in a default judgment against him. However, the summons served on Hood plainly states the defendant (Hood) is required to answer the complaint and failure to do so will result in the plaintiff [§ 281] (Ammons) applying to the court for the relief demanded in the complaint. Furthermore, while Hood claims he has never been served with a complaint before, the record shows he is not totally unfamiliar with legal matters. Hood states in his affidavit in support of his motion to answer: "I was informed of my predicament by my personal attorney, K. Wayne Shelley, who had discovered the suit and its status while doing other unrelated work for me." Finally, Hood's insurance agent advised Hood to bring the papers to her which he did not do. Under these circumstances, we agree with the trial court Hood's neglect is inexcusable. Having decided such, we need not address Hood's contention he has a meritorious defense.

[4][5][6] Hood next argues the trial court erred in not dismissing the action at the beginning of the damages hearing because the complaint fails to state a cause of action. We find the complaint clearly states a cause of action for negligence by alleging a duty owed by Hood to Ammons and a breach of that duty which caused injury to Ammons. Hood further argues the trial court erred in not dismissing the action at the conclusion of the damages hearing since workers' compensation is Ammons' exclusive remedy pursuant to S.C. Code Ann. § 42-1-540 (1976). A defendant who wishes to raise the exclusivity of workers' compensation as a defense must do so affirmatively. *Googe v. Speaks*, 194 S.C. 206, 9 S.E.2d 439 (1940). Since Hood did not answer, the trial court correctly denied the motion.

[7] Hood also claims the trial court awarded excessive actual damages. A trial judge has the authority under S.C. Code Ann. §§ 15-35-310, 320 (1976) to determine damages in a default action. The evidence in the record supports the amount awarded by the trial judge. Ammons incurred medical expenses of \$5,841.23. At the time of the hearing, Ammons' lost wages totaled \$3,500.00 and William L. Cheezem, Ammons' surgeon, testified Ammons suffered permanent disability of probably 25%. Dr. Cheezem also testified Ammons would remain totally disabled for another three months after the hearing. In addition, there is evidence in the record regarding the restrictions on Ammons' activities which have resulted from the injury.

[**282] [8] Finally, Hood alleges the trial court erred in restricting his cross-examination during the

damages hearing to the issue of damages. In a default action, the default judgment settles the issue of liability. The hearing is held solely to determine what damages should be awarded. The trial judge properly allowed Hood to cross-examine the witnesses regarding damages and Hood is entitled to no more. See Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), appeal after remand 276 S.C. 502, 280 S.E.2d 204 (1981).

AFFIRMED

CURETON and GOOLSBY JJ concur

SCHENK V NATIONAL HEALTH CARE, INC
471 S E 2d 736, 322 S C 316 (S C.App 1996)

Headnotes

Opinion

Cases Citing This Case

Court of Appeals of South Carolina

Peggy SCHENK, Respondent,

v

NATIONAL HEALTH CARE, INC Appellant.

No 2506

Submitted April 1 1996

Decided April 29, 1996

Rehearing Denied June 21 1996

Certiorari Denied Dec 5 1996

SYNOPSIS

Former employee brought wrongful discharge action against former employer for allegedly being terminated for filing workers compensation claim. The Circuit Court, Greenwood County Charles B. Simmons Jr. Special Judge entered judgment for employee and employee appealed. The Court of Appeals Anderson, J. held that (1) employer was properly served by delivery of summons and complaint to its office manager, (2) employer conceded liability by defaulting, and (3) employer was not entitled to set off employee's unemployment benefits in computing award.

Affirmed.

HEADNOTES

[1] Process ~~C~~ 58

313 ---

313II Service

313II(A) Personal Service in General

313k56 Persons to Be Served

313L58 Attorney or Agent of Party

Employer was properly served by delivery of summons and complaint to its office manager as its "managing agent," where office manager assured process server that she was duly authorized to accept service of process and employer failed to update its records with Secretary of State after its registered agent retired. Code 1976, § 33-5-102 Rules Civ.Proc., Rule 4(d)(3)

[2] Judgment ~~C~~ 112

228 ---

228IV By Default

228IV(A) Requisites and Validity

228k110 Operation and Effect of Default

228k112 Matters Admitted

Employer conceded liability on employee's claim that she was wrongfully discharged for filing workers' compensation claim by defaulting

[3] Labor and Employment ~~C=~~868(7)

231H ---

231HVM Adverse Employment Action

231HVM(B) Actions

231Hk864 Monetary Relief Damages

231Hk868 Aggravation Mitigation or Reduction of Loss

231Hk868(7) Other Particular Matters

(Formerly 255k41(1) Master and Servant)

Employer was not entitled to set off former employee's unemployment benefits in computing damages award for wrongful discharge

[*736] [*317] Appeal From Greenwood County Charles B. Simmons, Jr. Special Circuit Court Judge

COUNSEL

J. Stephen Welch, of Welch & Cram, Greenwood, for appellant

Joseph C. Smithdeal, of Judson Ayers & Associates, Greenwood, for respondent.

OPINION

ANDERSON, Judge

This is a wrongful termination action in which the court entered an order of default against National Health Care, Inc. and awarded Peggy Schenk \$14,994 in damages as compensation for lost wages. National Health Care, Inc. appeals the court's failure to set aside the order of default and the computation of damages. We affirm. (FN1)

Schenk filed this action on April 14, 1993, alleging she was wrongfully terminated from her position with National Health Care on May 15, 1992, because she had filed a claim for workers' compensation benefits. According to the records of the South Carolina Secretary of State, the appellant's registered agent for service of process was Betty Finley at 1501 E. Greenville Street, Anderson, South Carolina. A process server took the summons and complaint to the noted address [*318] on April 22, 1993. According to his affidavit, Ms. Carol Grant advised him Betty Finley had retired from the company and she was [*737] duly authorized to accept service of process as the office manager. Ms. Grant assured the process server she would pass the papers along to corporate headquarters. No answer was received and respondent's counsel obtained an 'Order of judgment and for hearing to ascertain damages' on July 27, 1993. National Health Care filed a motion to set aside the default. The motion was denied. After a damages hearing, the court awarded Schenk compensation for lost wages for a period of sixty-three weeks in the amount of \$14,994.

I

[1] National Health Care argues the court erred in failing to set aside the entry of default because Schenk did not properly serve the company and it desired to respond to the merits of the action

Rule 4(d)(3), SCRCP addresses service of process upon a corporation as follows

Upon a corporation by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires by also mailing a copy to the appellant.

Rule 4(d)(7), SCRCP concerns statutory service and provides "[s]ervice upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule is also sufficient if the summons and complaint are served in the manner prescribed by statute."

According to a certificate from the South Carolina Secretary of State "NATIONAL HEALTHCARE CORPORATION" (FN2) is a South Carolina corporation which was incorporated on April 21, 1986. The registered agent is Betty Finley and the registered address is "c/o 1501 East Greenville, Anderson [**319] SC." The respondent attempted to serve the registered agent of the appellant at the address designated by the company to the Secretary of State, but the registered agent had retired. Apparently National Health Care had not notified the Secretary of State of this circumstance and had not changed its registered agent as provided by S.C. Code Ann. § 33-5-102 (Rev. 1990).

Even though we agree with the conclusion of the trial judge that the respondent should not be penalized for the appellant's failure to update its records with the Secretary of State, the case of Kreke v. Ohio Gear-Wallace Murray Corp., 287 S.C. 388, 339 S.E.2d 115 (1986), is controlling. Kreke states

The only issue on appeal is whether service was improper because it was not made upon the registered agent.

S.C. Code Ann. § 15-9-240(a) (Supp. 1984) provides for service of process on the registered agent of a foreign corporation. Subsection (b) allows service on the Secretary of State only if the foreign corporation has no registered agent as required by § 33-5-40 (Supp. 1984) or if the registered agent cannot be found at the registered office, or if the corporation's certificate of authority has been suspended or revoked. Because none of these circumstances exists here, service should have been made upon the registered agent.¹ (footnote in original)

Kreke, 287 S.C. at 389, 339 S.E.2d at 115-116.

The footnote in Kreke is edifying. We visit this trial record within the aegis and ambit of Rule 4(d)(3), SCRCP. The rule provides "[s]ervice shall be made upon a corporation by delivering a copy of the summons and complaint to a managing agent. See Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981) [*738] (service on an agent is sufficient even though corporation has a registered agent).

Thus, the issue posited is whether Carol Grant is a "managing agent" under the rule. Carol Grant is the office manager of [**320] the appellant. Further, she assured the process server that she was duly authorized to accept service of process.

No case has been found in South Carolina defining "managing agent" under Rule 4(d)(3), SCRCP; however, we come to the ineluctable conclusion Carol Grant is the managing agent of the appellant. Concomitantly, the appellant was properly served when the summons and complaint was delivered to her.

as the managing agent of the appellant.

In 1988 the South Carolina legislature repealed the 1981 South Carolina Business Corporation Act and enacted the South Carolina Business Corporation Act of 1988 S.C. Code Ann. § 33-1-101 (Rev. 1990)

The *South Carolina Reporters' Comments* to S C Code Ann. § 33-15-110 (Rev 1990), elucidates with clarity that service of process on a foreign corporation is permitted in a bifurcated fashion

In addition the Model Act and Section 15-9-240 provide that either the procedure in South Carolina Civil Procedure Rule 4(d)(3) (serving an officer) or that contained in Section 15-9-240 (serving the agent) is proper

The new language clearly reverses the result of Kreke v. Ohio Gear Wallace Murray Corporation, 287 S C 388, 339 S E 2d 115 (1986). In that case the court held that service on both a key employee of a foreign corporation and the Secretary of State was invalid where the foreign company properly had designated C T Corporation as its South Carolina agent for service of process. Although the court overlooked the then existing statutory language which stated that "nothing herein contained shall limit or affect the right to serve any process in any other manner now or hereafter permitted by law " and although in footnote #1 the court stated "we express no opinion whether Rule 4(d)(3) SCRCF would change the result in a similar case," the new language of subsection (d) clearly states that the service method in Kreke (or under Rule 4(d)(3)) is now valid. This is in keeping with the court's earlier opinion, Renney v. Doobs [sic] Houve, Inc., 275 S C 562, 274 S E 2d 290 (1981) (one can serve any "authorized agent" even though the company has a specific statutory agent")

[**321] S C Code Ann. § 33-15-110 *South Carolina Reporters' Comments* (Rev 1990)

II.

[2][3] With respect to the damages award, the company argues the court erred in awarding damages to Schenk because she "failed to establish causally related damages by a preponderance of the evidence. The company also argues the court failed to set off Schenk's unemployment benefits in computing the award.

National Health Care argues Schenk failed to establish her damages because she failed to prove the filing of a workers' compensation claim was a determinative factor in her discharge. However, by defaulting, the company conceded liability if not necessarily the amount of the liability Howard v. Holiday Inns Inc., 271 S C 238, 246 S E 2d 880 (1978). As to the setoff argument, the circuit court concluded any unemployment benefits received by Schenk are funds from a collateral source and National Health Care was not entitled to a setoff. We agree with the circuit court's conclusion. This court recently held the collateral source rule applies to unemployment benefits Dixon v. Besco Eng'g, Inc. 320 S C 174, 463 S E 2d 636 (Ct App 1995).

The decision of the circuit court is

AFFIRMED

CURETON and GOOLSBY, JJ, concur

(FN1.) Because oral argument would not aid the court in resolving the issues, we decide this case without oral argument.

(FN2.) The Court notes the dissimilarity of names relating to the appellant and "NATIONAL HEALTHCARE CORPORATION " however, no one argues this point on appeal. We assume the

appellant and "NATIONAL HEALTHCARE CORPORATION" are one and the same or are so closely connected and related that a judgment against one would bind the other. See Kincaid v. Landing Development Corp., 289 S. C. 89, 344 S. E. 2d 869 (Cl. App. 1986) (trial court held that evidence revealed an amalgamation of corporate interests, entities and activities so as to blur the legal distinction between the corporations and their activities.)

1. We express no opinion whether Rule 4(d)(3), SCRCP would change the result in a similar case.

DOE V S B M.

488 S E 2d 878, 327 S C 352 (S C App 1997)

Headnotes

Opinion

Cases Citing This Case

Court of Appeals of South Carolina.

John DOE Respondent,

v

S.B M Appellant

No 2671

Heard May 6 1997

Decided June 9 1997

SYNOPSIS

Plaintiff brought claims of intentional infliction of emotional distress and invasion of privacy Defendant failed to answer and default[*879] was entered on issue of liability Following default damages hearing, the Circuit Court, Greenville County, Alexander S Macaulay J , entered judgment for \$30,204 in favor of plaintiff and denied defendant's motions for new trial and new hearing on damages Defendant appealed The Court of Appeals Anderson, J held that refusal to allow defendant to cross examine plaintiff regarding reason plaintiff lost his job was proper since question went to liability rather than damages

Affirmed

HEADNOTES

[1] Appeal and Error ~~C~~ 181

30 - --

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k181 Necessity of Objections in General

Objections not raised in trial court cannot be relied on in appellate court

[2] Appeal and Error ~~C~~ 181

30 ---

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions and Rulings Thereon

30k181 Necessity of Objections in General

Duty is on litigant to make timely objection in order to preserve right of review

[3] Appeal and Error ~~C~~ 230

30 - —

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions and Rulings Thereon

30k230 Necessity of Timely Objection.

Contemporaneous objection is required to properly preserve error for appellate review

[4] Appeal and Error ~~C~~ 230

30 - —

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k230 Necessity of Timely Objection

Failure to make objection at time evidence is offered constitutes waiver of right to object.

[5] Appeal and Error ~~C~~ 204(1)

30 —

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions and Rulings Thereon

30k202 Evidence and Witnesses

30k204 Admission of Evidence

30k204(1) In General

Failure to object to certain evidence introduced at default damages hearing waived those issues on appeal

[6] Damages ~~C~~ 194

115 —

115X Proceedings for Assessment

115k193 Inquest on Default or Interlocutory Judgment

115k194 Nature and Form of Proceeding

At default damages hearing on claims for intentional infliction of emotional distress and invasion of right to privacy, defaulting defendant was properly prohibited from cross-examining plaintiff as to reason he was asked to resign from his job where that query related to liability which had been decided by default not to damages

COUNSEL

[*879] [*353] O W Bannister Jr of Hill Wyatt & Bannister Greenville for Appellant

Douglas A Churdar Greenville, for Respondent.

OPINION

ANDERSON Judge

John Doe (Doe) filed this action alleging two theories (1) Publication of Private Facts (the tort of the Right to Privacy) and (2) Outrage (the tort of Intentional Infliction of Emotional Distress) against S B M seeking a permanent injunction and damages. After S B M defaulted a damages hearing was held and Doe was awarded a total of \$30,204.23 damages. We affirm.

[*354] **FACTS/PROCEDURAL BACKGROUND**

In the spring of 1994, Doe and S B M were involved in a homosexual relationship and lived together for approximately three weeks in Greenville, South Carolina. Doe ended this relationship in April of 1994. Thereafter, S.B.M. contacted Doe's employer and informed him of the parties' homosexual relationship. Further, S B M stole Doe's mail and rolodex, which contained the names of Doe's insurance clients. S.B.M. threatened to call Doe's clients and inform them Doe is a homosexual. According to Doe, S B M stated he would not be satisfied until Doe was 'flipping hamburgers and driving a Volkswagen.' He wanted to harm Doe's personal and professional reputation. S B M called Doe's mother and revealed intimate, graphic details about Doe's homosexual relationship with S B M.

On one occasion, while living in Greenville, Doe called the police and reported S B M's threatening conduct. After repeated threats and harassment by S B M, Doe moved to Charlotte, North Carolina. As a result, Doe lost his deposit on his apartment in Greenville. After Doe moved to Charlotte, S B M continued to threaten and harass him. Doe called the Charlotte police twice and reported S B M's conduct. Once, Doe went to the Charlotte police station because S B M was following him. S B M broke into his apartment, physically threatened Doe, and damaged Doe's company vehicle by slashing the tires and scratching the paint with a key. He told Doe he tapped his phones. On the night of May 3, 1994, S B M went to Doe's neighborhood, knocked on his neighbor's doors, and walked from door to door yelling [*880] Doe was a 'queer,' a 'fag,' and other crude names.

As a result of S B M's calls to Doe's employer, his threats to call Doe's customers, and his vandalism of Doe's car, Doe's employer asked him to resign from the insurance company. Doe was unemployed for two months.

After a hearing, the court granted a temporary restraining order until the case could be heard upon its merits. S B M, who was served on June 2, 1994, failed to answer, file a notice of appearance, or otherwise respond to the complaint. On September 2, 1994, the judge signed an order for entry of default, which was filed September 6, 1994. The order provided [*355] A hearing to ascertain damages shall be held on a date to be set by the Court. By letter dated September 12, 1994, Doe's counsel mailed S B M the order along with interrogatories and a request for production of documents. In the letter, Doe's counsel explained "[a]lthough you are in default, the amount of damages has not yet been determined." He forwarded a notice of damages hearing scheduled for January 3, 1996, to S B M on November 21, 1995.

At the damages hearing, S B M appeared *pro se*. Without objection by S B M, Doe entered documentation of damages into evidence and testified extensively. At the end of the hearing, the trial judge orally issued an order without objection by S B M. Thereafter, the court issued a written order awarding Doe \$9601.41 in special damages, \$10,301.41 in compensatory damages, and \$10,301.41 in punitive damages for a total award of \$30,204.23.

After the issuance of the order awarding damages, S B M filed a motion to be relieved of default. Additionally, he moved for a new trial and a new hearing on damages. The court denied the motions.

ISSUES

- I Did the trial court err in awarding special damages when special damages were not pleaded?
- II Did the trial court err in awarding special damages relating to the vandalism of Doe's car?
- III Did the trial court err in calculating the compensatory damage award?
- IV Did S B M fail to preserve the issues raised on appeal?
- V Did the trial court err in prohibiting S B M. from cross-examining Doe regarding the reason Doe lost his job?

LAW/ANALYSIS

Error Preservation

Of the issues S B M raises on appeal, he preserved only one. Issues one through three are not preserved.

[**356] At the damages hearing Doe testified. The court admitted four exhibits consisting of (1) a collection of photographs of Doe's vandalized vehicle, (2) a letter from the assistant vice president of Pennsylvania Lumbermens Mutual Insurance Company explaining the reason Doe was asked to resign, (3) an advertisement in regard to the job from which Doe was forced to resign, and (4) an outline of damages sustained by Doe. S B M did not object to any of these exhibits or Doe's testimony.

[1][2][3][4] Objections not raised in the trial court cannot be relied on in the appellate court. Wilson v. Clary, 212 S.C. 250, 47 S.E.2d 618 (1948). The duty is on the litigant to make a timely objection in order to preserve the right of review. Parks v. Morris Homes Corp., 245 S.C. 461, 141 S.E.2d 129 (1965). A contemporaneous objection is required to properly preserve an error for appellate review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object. Cordell v. Watson, 289 S.C. 531, 347 S.E.2d 126 (Ct. App. 1986) (citing McCreight v. MacDougall, 248 S.C. 222, 149 S.E.2d 621 (1966)). See also Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994) (by failing to raise contemporaneous objection to plaintiffs' request for punitive damages, city waived any objection to propriety of punitive damages against municipality). Ball v. Canadian Air Express Co., 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994) [*881] (failure to object at trial waives right to object on appeal).

As a general rule, an issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal. State v. Hudgens, 319 S.C. 233, 460 S.E.2d 388 (1995), cert. denied, 516 U.S. 1096, 116 S.Ct. 821, 133 L.Ed.2d 764 (1996). Matters not argued to or ruled on by the trial court are not preserved for review. Food Mart v. South Carolina Dept. of Health and Environmental Control, 322 S.C. 232, 471 S.E.2d 688 (1996). See also Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995) (issue not preserved for review should not have been addressed by Court of Appeals and opinion was vacated to extent it addressed issue that was not preserved), State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993) (to [**357] preserve an issue for appellate review, appellant must object at his first opportunity).

[5] Our review of the trial record reveals S B M did not object to any issue relating to damages except his request to cross-examine Doe regarding the loss of employment by Doe. S B M's failure to object at trial waives any right to raise issues one through three on appeal.

Right of Cross-Examination on Reason Doe Lost His Employment

[6] S B M argues the trial court erred in prohibiting him from cross-examining Doe at the damages

hearing regarding the reason Doe lost his job. He claims Doe's loss of employment is an element of damage, not a question of liability.

In Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), our Supreme Court set out the procedure to be followed in a default damages hearing. In Howard, the Court explained:

The question of what right, if any, a defaulting defendant has to participate in the proceedings relative to the question of assessing damages has never been judicially resolved in this state. There are three possible approaches. We could (1) allow damages to be determined in an *ex parte* proceeding, denying the defendant any right to participate, (2) allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation, or (3) allow damages to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. We hold that this third approach is the proper one and approve it for use in the courts of this state.

Howard, 271 S.C. at 241, 246 S.E.2d at 882.

In Ammons v. Hood, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986), this Court further explicated:

Finally, Hood alleges the trial court erred in restricting his cross-examination during the damages hearing to the issue of damages. In a default action, the default judgment settles the issue of liability. The hearing is held solely to determine what damages should be awarded. The trial [**358] judge properly allowed Hood to cross-examine the witnesses regarding damages, and Hood is entitled to no more.

Ammons, 288 S.C. at 282, 341 S.E.2d at 818.

The following colloquy involving the court, plaintiff's counsel, and S.B.M. occurred at the damages hearing:

Q [Doe] were you issued a citation on October the 7th of '93 by Officer Bond of the Greenville City Sheriff's Department?

Mr. Churdar: Irrelevant, Your Honor.

The Court: What--

S.B.M.: It's very much relevant.

The Court: I'm glad that you think so, sir, but now why don't you tell me how it's relevant?

S.B.M.: Well, Your Honor, the reason [Doe] lost his job was this arrest. It is very, very much part of this case. He was confronted by his employer. He denied it, said it was a [Doe] from Charlotte, it was not him in particular.

The Court: Just a moment. All right, you're going back into something as to liability, and it has nothing to do with this case here.

[*882] S.B.M.: Your Honor, it's my understanding that there's a big part of this amount due on this is due to the fact that he lost his job.

The Court: Well, that's just it, that's already been established.

S.B.M.: Yes, sir, he lost his job, but there was a reason he lost it, not pertaining--

The Court: Unfortunately, that should have been tried at another place. The liability has already been

established. We're just trying to determine what the damages were by reason of that liability.

S B M: I wasn't—I wasn't able to have a trial.

The Court: Oh, most certainly you were. You were at the time that you were served with these pleadings. That's when you were supposed to establish liability. Now we are trying to determine what the damages are by reason of liability.

Objection sustained.

[**359] S B M: So questions that I'm asked— that I'm able to ask—

The Court: As to the damages here.

S B M: Okay.

The Court: Not as to the cause of the damages, but as to the amounts of the damages.

S B M: Nothing pertaining to the case [sic] of the damages?

The Court: No, sir, that's liability, and that has been established by prior order of, I think it was Judge Floyd.

Mr. Churdar: Yes, Your Honor.

S B M: So the only thing that I'm able to ask questions pertaining to would be the amount, the dollar amount?

The Court: Exactly. This is a damage hearing. This is no longer a liability—it doesn't have anything to do with any claims that might have been brought, or anything else. That's why we're just trying to keep this thing simple without complication. This is—

S B M: I guess I'm just—

The Court: --a damage hearing. This is not liability. Liability has already been established.

We agree with the trial judge that the queries emanating from S B M related to *liability* rather than *damages*. Consequently, the court properly prohibited S B M from cross-examining Doc as to the reason he was asked to resign from his job.

CONCLUSION

Accordingly, the trial court's order is

AFFIRMED

HOWELL, C.J. and GOOLSBY, J. concur.

ROCHE V YOUNG BROS , INC , OF FLORENCE
504 S E 2d 311, 332 S C 75 (S C 1998)

Headnotes

Opinion

Cases Citing This Case

Supreme Court of South Carolina

Catherine ROCHE, as Personal Representative for the Estate of George Roche, Petitioner

v

YOUNG BROTHERS, INC OF FLORENCE, d/b/a Days Inn East, Respondent

No 24829

Heard May 27 1998

Decided Aug 10 1998

SYNOPSIS

Innkeeper that was named as defendant in personal injury action arising from slip-and-fall accident was found in default, and on remand, 318 S C 207, 456 S E 2d 897, the Circuit Court, Florence County Daniel E Martin, Sr J referred matter to special referee who awarded \$25 000 in actual damages and \$75 000 in punitive damages Innkeeper appealed The Court of Appeals reversed and remanded, 326 S C 488, 485 S E 2d 110, Certiorari was granted The Supreme Court, Toal, J , held that (1) consent of defaulting party is not required before circuit court may refer case to special referee even if defaulting defendant has made appearance in case (2) special referee's failure to timely issue his final order did not void order of reference (3) special referee's impartiality could not reasonably be questioned (4) admission of alleged hearsay evidence did not prejudice innkeeper

Court of Appeals' decision reversed.

HEADNOTES

[1] Reference Ⓒ24

327 ---

327I Nature, Grounds and Order of Reference

327k24 Consent to Reference

The consent of a defaulting party is not required before the circuit court may refer a case to a special referee, even if the defaulting defendant has made an appearance in the case Code 1976, § 14-11-60
Rules Civ Proc Rule 53

[2] Statutes Ⓒ181(1)

361 ---

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(1) In General

The Supreme Court's primary function in interpreting a statute is to ascertain the intent of the legislature

[3] Statutes $\Rightarrow$ 184

361 ---

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k184 Policy and Purpose of Act

A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of the lawmakers

[4] Statutes $\Rightarrow$ 223 1

361 - -

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to Other Statutes

361k223.1 In General

Generally statutes are to be construed with reference to the whole system of law of which they form a part.

[5] Statutes $\Rightarrow$ 181(2)

361 ---

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(2) Effect and Consequences

In construing a statute the court is constrained to avoid an absurd result.

[6] Judgment $\Rightarrow$ 112

228 ---

228IV By Default

228IV(A) Requisites and Validity

228k110 Operation and Effect of Default

228k112 Matters Admitted

By suffering a default the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability

[7] **Damages** **202**

115 —

115X Proceedings for Assessment

115k193 Inquest on Default or Interlocutory Judgment

115k202 Notice to Defendant

[See headnote text below]

[7] **Damages** **204**

115 —

115X Proceedings for Assessment

115k193 Inquest on Default or Interlocutory Judgment

115k204 Rights of Parties in General

Though a defaulting party may be entitled to notice of the damages hearing that party is limited to cross-examining witnesses and objecting to evidence

[8] **Reference** **79**

327 —

327III Report and Findings

327k79 Time for Report

Special referee's failure to issue his final order within thirty days after damages hearing was held as required by order of reference, did not void order of reference, but rather simply restored discretion to circuit court as to manner of disposing of case, thus, circuit court had discretion to grant plaintiff's motion to extend time in which special referee could file his order, and court had discretion to grant motion and issue nunc pro tunc order permitting entry of judgment on special referee's order which was issued 39 days after hearing. Code 1976, § 14-11-60, Rules Civ.Proc., Rule 53

[9] **Judges** **51(4)**

227 —

227IV Disqualification to Act

227k51 Objections to Judge and Proceedings Thereon

227k51(4) Determination of Objections

It is not enough for a party seeking disqualification of a judge to simply allege bias, the party must show some evidence of that bias or prejudice Appellate Court Rule 501 Code of Jud Conduct, Canon 3 subd E(1)(a)

[10] **Appeal and Error** **1035**

30 —

30XVI Review

30XVI(J) Harmless Error

30XVI(J)2 Nature or Form of Remedy

30k1035 In General

If there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed

on appeal Appellate Court Rule 501 Code of Jud Conduct, Canon 3, subd. E(1)(a)

[11] Judges ~~§~~49(1)

227 ---
227IV Disqualification to Act
227k49 Bias and Prejudice
227k49(1) In General

A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. Appellate Court Rule 501 Code of Jud Conduct, Canon 3 subd E(1)(a)

[12] Reference ~~§~~37

327 ---
327II Referees and Proceedings
327k37 Eligibility and Qualifications

Special referee's impartiality in personal injury case could not reasonably be questioned on ground that he used his law firm's stationery which included statement "LAWYERS ON THE SIDE OF INJURED PEOPLE," to print cover letter that transmitted his order to counsel for parties Appellate Court Rule 501, Code of Jud.Conduct, Canon 3 subd. E(1)(a)

[13] Reference ~~§~~37

327 ---
327II Referees and Proceedings
327k37 Eligibility and Qualifications

Special referee's impartiality in personal injury case could not reasonably be questioned on ground that he received similar award in previous personal injury action in which member of law firm representing plaintiffs in instant action served as special referee. Appellate Court Rule 501 Code of Jud Conduct Canon 3 subd. E(1)(a)

[14] Appeal and Error ~~§~~1050.1(10)

30 -- -
30XVI Review
30XVI(J) Harmless Error
30XVI(J)10 Admission of Evidence
30k1050 Prejudicial Effect in General
30k1050 1 Evidence in General
30k1050 1(8) Particular Types of Evidence
30k1050.1(10) Admissions Declarations, and Hearsay

Even if medical records and bills were inadmissible as hearsay in personal injury case, defendant was not prejudiced by admission of such evidence as victim's wife testified extensively about victim's injuries and nature of medical treatment he received following accident, and medical records and bills corroborated her testimony in this regard

[15] Evidence 477(2)

157 - -

157XII Opinion Evidence

157XII(A) Conclusions and Opinions of Witnesses in General

157k477 Bodily Appearance or Condition

157k477(2) Physical Condition.

Personal injury plaintiff's wife was properly allowed to express her opinion concerning plaintiff's medical condition, even though wife was not medical expert, her testimony involved her ordinary observations of victim's physical condition following accident.

COUNSEL

[*312] [*78] William P. Hatfield [*312] and Gary L. Finklea, both of The Hyman Law Firm, Florence, for petitioner

William Reynolds Williams and C. Craig Young, both of Willcox, McLeod, Buyck & Williams, Florence, for respondent

OPINION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

TOAL, Justice

This case involves a default judgment in a negligence action. George Roche originally brought this negligence action against Respondent Young Brothers, d/b/a Days Inn East ("Young Brothers"), as a result of a slip-and-fall accident in Young Brothers' motel parking lot. Petitioner Catherine Roche, as personal representative of her husband's estate, appeals the Court of Appeals' decision that Young Brothers' consent was required prior to the circuit court appointing a special [*313] referee to consider the damages matter. We reverse and reinstate the special referee's order.

Factual/procedural Background

On March 19, 1990, Roche slipped and fell in the parking lot of Young Brothers' motel located in Florence, South Carolina. Roche filed suit against Young Brothers in circuit court on August 31, 1990. Young Brothers failed to answer Roche's complaint. A default was entered against Young Brothers on November 2, 1990. Without notice to Young Brothers, a damages hearing was held before the circuit court on February [*79] 6, 1992. The circuit court awarded Roche \$15,000.00 in actual damages and \$30,000.00 in punitive damages.

On February 14, 1992, Young Brothers filed a motion to set aside the default judgment under Rule 60(b), SCRPC. Young Brothers argued that the judgment should be set aside because service of process was not perfected, and, in the alternative, a new damages hearing should be granted because it did not receive notice of the hearing. The circuit court denied the motion. In July 1992, Young Brothers appealed the judgment to the Court of Appeals. The Court of Appeals reversed the circuit court's default judgment finding service of process had not been perfected. Roche v. Young Bros., Inc. of Florence, 313 S.C. 356, 437 S.E.2d 560 (Ct. App. 1993) ("Roche I"). We reversed the Court of Appeals and reinstated the entry of default. Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995) ("Roche II").

However we vacated the default judgment and awarded a new damages hearing because Young Brothers had failed to receive notice. Thus the case was remanded back to the circuit court for a new damages hearing.

In April 1995 Roche filed an *ex parte* motion with the circuit court requesting that the damages matter be referred to Eugene A. Fallon, Jr. as special referee. The circuit court granted the motion. Young Brothers did not receive notice of Roche's motion prior to the circuit court issuing its order of reference. Young Brothers later made a motion before the circuit court to have the reference withdrawn. The motion was denied.

The damages hearing was held before special referee Fallon on June 19, 1995. Young Brothers appeared and was represented by counsel. On July 28, 1995, the special referee, by written order, awarded Roche \$25,000.00 in actual damages and \$75,000.00 in punitive damages.

On appeal before the Court of Appeals, Young Brothers raised seven issues challenging the special referee's order. The Court of Appeals only addressed the issue concerning the circuit court's authority to refer the case to a special referee without the consent of the defaulting party. The Court of Appeals reversed, finding consent was necessary since Young Brothers made an appearance in the case. Roche v. Young [**80] Bros., Inc. of Florence, 326 S.C. 488, 485 S.E.2d 110 (Ct. App. 1997) ("Roche III").

We granted Roche's petition for a writ of certiorari to address the following issue:

Is the consent of a defaulting party required for the circuit court to refer a case to a special referee where the defaulting defendant has made an appearance in the case?

Law/Analysis

A. Consent

[1] Roche argues that the Court of Appeals erred in holding that where the defaulting party has made an appearance in the case, the consent of that party must be obtained before the circuit court may refer the case to a special referee. We agree.

The circuit court's authority to appoint a special referee is supplied by S.C. Code Ann. § 14-11-60 (Supp. 1997) which states:

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, **upon agreement of the parties**, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special [**314] referee must be compensated by the parties involved in the action.

(emphasis added) The emphasized language was added by amendment in 1988 (1988 Act No. 678, Part II, § 6, eff. January 1, 1989).

The appointment and powers of special referees are further governed by Rule 53, SCRPC. Rule 53 provides in pertinent part:

(a) *Appointment and Compensation.* As used in these rules the word "master" includes a referee. The court in which any action is pending may appoint a special master for that action, but where practicable the master appointed by statute for that county, or for that court, or for the particular type of action involved shall act. The court may [**81] in its discretion appoint as a special master **a person agreed upon by the parties**.

(b) *Reference* In an action where the parties consent or in a default case, any and all issues whether of law or fact, may be referred to a master by order of a judge or the clerk of court.

(emphasis added)

The problem in this case lies in reconciling the language in section 14-11-60 and Rule 53(a) with that in Rule 53(b). Section 14-11-60 and Rule 53(a) seem to require, without exception, the agreement of the parties prior to the appointment of a special referee. Rule 53(b), on the other hand suggests that consent is not required in a default situation. This interpretation of Rule 53(b) was confirmed in First Palmetto State Bank and Trust Company v. Boyles, 302 S.C. 136, 138, 394 S.E.2d 313, 314 (1990) where we held that Rule 53(b) "authorizes the circuit court to refer an action to a master-in-equity (1) by consent of the parties (2) if there is a default, (3) in actions with complicated issues to be tried before a jury, and (4) in all other actions upon application of any party or upon the court's motion." 302 S.C. at 138, 394 S.E.2d at 314.

[2][3][4][5] This Court's primary function in interpreting a statute is to ascertain the intent of the legislature. State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Id. Generally, statutes are to be construed with reference to the whole system of law of which they form a part. See 82 C.J.S. Statutes § 362 (1953). In construing a statute, this Court is constrained to avoid an absurd result. South Carolina Tax Commission v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E.2d 843 (1994).

[6][7] It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct.App. 1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct.App. 1985). Though a defaulting[*82] party may be entitled to notice of the damages hearing, that party is limited to cross-examining witnesses and objecting to evidence. Howard, 271 S.C. 238, 246 S.E.2d 880; Ammons v. Hood, 288 S.C. 278, 341 S.E.2d 816 (Ct.App. 1986). Moreover, once a party defaults, the trial court "may conduct such hearings or order such references as it deems necessary and proper to enter the default judgment." Rule 55(b)(1), SCRPC. Thus, although section 14-11-60 and Rule 53(a) do not specifically address default situations, it would be anomalous to interpret these provisions as requiring the consent of a defaulting party whenever the circuit court chose to refer the case to a special referee.

Not requiring the consent of a defaulting party is evidenced elsewhere in the Code and in the rules of civil procedure. For example, S.C. Code Ann. § 14-11-85 (Supp. 1997) provides that an appeal from the judgment of a master-in-equity must be to the circuit court unless the parties not in default consent in writing or on the record to a direct appeal to the Supreme Court. Another example is found in Rule 38(d), SCRPC, which provides in pertinent part: "A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties except where an opposing party is in default under Rule 55(a)." (emphasis added)

The Court of Appeals nevertheless suggests that the instant case does not fall within[*315] the "classic default" situation and, therefore, is not entitled to be excepted from the general consent requirement. The Court of Appeals explains that this is not a classic default situation because Young Brothers made an appearance in the case. As such, it would not have been unduly burdensome for Roche to have obtained Young Brothers' consent. We disagree.

Young Brothers clearly defaulted by failing to answer Roche's complaint within the prescribed time. Young Brothers' status as a defaulting party was not vitiated simply because it later chose to challenge the default judgment rendered against it. Contrary to the Court of Appeals' opinion, Young Brothers' default was in every way classic, as evidenced by our affirmation of the entry of default in Roche II. Thus, there is

no support for treating this case any differently from other default situations. To hold otherwise [**83] would mean that a defaulting party could acquire the right to veto the circuit court's reference authority simply by making some kind of appearance in the case. This would be an incongruous result.

Young Brothers nevertheless argues that requiring the agreement of both parties would have the beneficial effect of avoiding the appointment of referees who are not impartial. However, a defaulting party does not lose its right to have an impartial master or referee, and may still raise an objection based on such grounds. In fact, Young Brothers made a motion before the circuit court to have special referee Fallon's judgment vacated based on evidence that he was biased. The circuit court denied Young Brothers' motion, and Young Brothers subsequently raised the issue before the Court of Appeals.

We hold that Young Brothers' consent was not required prior to the circuit court appointing special referee Fallon. We therefore reverse the Court of Appeals on this issue.

B remaining Issues

Because it reversed the trial court on the consent issue, the Court of Appeals did not address the remaining issues raised by Young Brothers. We have complete confidence that the Court of Appeals could very capably address these issues on remand. However, in the interest of bringing finality to this litigation, we will address the remaining issues here.

The other issues raised to the Court of Appeals include the following: (1) whether the circuit court was without authority to issue the *nunc pro tunc* order permitting entry of judgment on the order of special referee Fallon; (2) whether the South Carolina Code of Judicial Conduct requires the recusal of the special referee in this case; (3) whether the order of the special referee is not supported by the pleadings and is based on inadmissible evidence; (4) whether the order contains findings and conclusions contrary to the admitted pleadings and evidence, thus, denying the defendant due process of law; (5) whether the judgment for actual and punitive damages is excessive, thereby warranting a new damages hearing; and (6) whether the punitive damages are not justifiable in this case and should not have been awarded.

[8] [**84] In its Order of Reference, the circuit court had required the special referee to issue his final order within thirty days after the damages hearing had been held. The special referee issued his order thirty-nine days after the hearing. Roche filed a motion with the circuit court to extend the time in which the special referee could file his order. The circuit court granted the motion and issued a *nunc pro tunc* order. Young Brothers argues that the circuit court was without authority to issue the *nunc pro tunc* order increasing the time for the special referee to issue his final order. We disagree.

The failure of the special referee to act within the times prescribed in the order of reference does not void the order of reference, but simply restores discretion to the circuit court as to the manner of disposing of the case. Lions v. Butler, 288 S.C. 498, 343 S.E.2d 630 (Ct. App. 1986). Cf. Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 433 S.E.2d 909 (Ct. App. 1993) (finding that the order of reference was voided because, unlike Lions, the order of reference stated that it would become "null and void" if [**316] the master failed to file his order within the time prescribed). We therefore find the trial court did not abuse its discretion in issuing the *nunc pro tunc* order in this case.

Second, Young Brothers contends that special referee Fallon's impartiality was questionable for two reasons: (1) special referee Fallon received a similar award in a previous personal injury action (Leasure v. Graham, 93-CP-21-1000) where a member of Roche's attorney's firm served as special referee; and (2) special referee Fallon transmitted a copy of his order to Young Brothers' attorney using his law firm letterhead which reads "THE FALLON LAW FIRM, LAWYERS ON THE SIDE OF INJURED PEOPLE." As such, Young Brothers argues that Canon 3 of Rule 501 of the South Carolina Code of

Judicial Conduct required the recusal of special referee Fallon. We disagree.

[9][10][11] Under the Applicability section of Rule 501 SCACR, a special referee is considered a "judge." Moreover, pursuant to Canon 3(E)(1)(a) of Rule 501 SCACR, a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he has a personal bias or prejudice [*85] against a party. See also Murphy v. Murphy, 319 S.C. 324, 461 S.E.2d 39 (1995). It is not enough for a party seeking disqualification to simply allege bias; the party must show some evidence of that bias or prejudice. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Cl.App. 1996). If there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S.E.2d 856 (1993). A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. *Id.*

[12] In the instant case, special referee Fallon only used his law firm's stationery to print the cover letter that transmitted his order to counsel for the parties. The order itself was properly printed on plain paper. Moreover, the transmittal letter does not reasonably put into question Fallon's impartiality. Presumably any attorney associated with a plaintiff-oriented firm would frequently advocate the rights of injured people and advertise as such. The fact that an attorney is specialized as a plaintiff or defense attorney does not automatically impugn that attorney's impartiality once he or she assumes the role of special referee.

[13] As for the *Leasure* matter, it should first be noted that Florence County, with a population of less than 130,000, has chosen not to create the office of master-in-equity. See S.C. Code Ann. § 14-11-10 (Supp. 1997) (master-in-equity court is required only in counties with populations of at least 130,000). Thus, referees will invariably be appointed who were involved in prior, unrelated legal matters with the attorneys appearing before them. If this were the sole basis for disqualification, such counties would be severely hampered in their ability to appoint special referees. Young Brothers nevertheless suggests that a *quid pro quo* was implicit because the damages award in this case was similar to the award in the *Leasure* matter. We, however, find no evidence of bias or prejudice on the part of the special referee. The record clearly supports the special referee's factual findings and award of damages.

[14] Third, Young Brothers argues that the special referee's order was not supported by the pleadings and was based on inadmissible hearsay evidence in the form of medical [*86] records and bills. We disagree. The conduct of the trial, including the admission and rejection of testimony, is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant. Baber v. Greenville Co., 327 S.C. 31, 488 S.E.2d 314 (1997). At the damages hearing, Mrs. Roche testified extensively about her husband's injuries and the nature of the medical treatment he received following the accident. The medical records and bills corroborated Mrs. Roche's testimony in this regard. We therefore find the evidence was not prejudicial to Young Brothers. Starkey v. Bell, 281 S.C. 308, 315 S.E.2d 153 (Cl.App. 1984) (though testimony may constitute inadmissible hearsay evidence, no prejudice is shown when it merely corroborates [*317] other evidence admitted in the case). We further conclude that the special referee's order was consistent with the admitted pleadings and was not a denial of due process of law.

[15] Young Brothers next argues that the special referee improperly allowed Mrs. Roche to express her opinion concerning her husband's medical condition. We disagree. Generally, an ordinary observer who has had the opportunity for observation may state the health or physical condition of another, who has been injured, to enable the fact finder to draw a correct inference. 32 C.J.S. *Evidence* § 552 (1996). However, a non-expert witness may not testify to matters that require special knowledge, skill, and experience. *Id.* We find that Mrs. Roche's testimony involved her ordinary observations of her husband's physical condition.

following the accident. Thus, it was properly allowed.

Finally, Young Brothers contends that the special referee's order was improperly based on speculative and conjectural testimony and that the judgment for actual and punitive damages was excessive and unjustifiable. Upon examining the record, we find that Young Brothers was not unfairly prejudiced by any speculative or conjectural testimony. We further find the evidence supports the referee's judgment for actual and punitive damages. See Miller v. City of West Columbia, 322 S.C. 224, 231, 471 S.E.2d 683, 687 (1996) ("The appellate court will intervene only where the verdict is so grossly excessive and the amount awarded is so shockingly [*187] disproportionate to the injuries to indicate that it was the result of caprice, passion, prejudice, or other considerations not found on the evidence.")

Conclusion

Based on the foregoing, the Court of Appeals' decision is **REVERSED**, and the special referee's order is reinstated.

FINNEY, C.J., MOORE and BURNETT, JJ., and GEORGE T. GREGORY, Jr., Acting Associate Justice, concur.